SENATE—*Friday, October 20, 1989*

(Legislative day of Monday, September 18, 1989)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

My son, forget not my law; but let thine heart keep my commandments; For length of days, and long life, and peace, shall they add to thee. Let not mercy and truth forsake thee: bind them about thy neck: write them upon the table of thine heart: So shalt thou find favour and good understanding in the sight of God and man.—Proverbs 3:1–4.

Gracious Father in Heaven, Judge of all the Earth, full of mercy and truth, fill this Chamber with Your presence and impart to the Senators godly insight as each, in the awesome pain and loneliness of such a decision, stands alone to pronounce the solemn word—guilty—not guilty. Mighty God, perfect in justice, lead your faithful servants in this irrevocable moment. In the name of Him, who is love incarnate. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, the time for the two leaders has been reserved for their use later today. As I indicated last evening I will shortly suggest the absence of a quorum. When the Chair announces that a quorum is not present, I will move to instruct the Sergeant at Arms to request the attendance of absent Senators and request a rollcall vote on that motion.

Once the quorum has been established, the Senate will begin voting on the first article of impeachment with additional rollcall votes occurring shortly thereafter.

I urge Senators to be present and in their seats prior to the first vote and to remain in their seats during all the rollcall votes so as to reduce the length of time necessary to conduct these votes and maintain the decorum of the Senate during votes.

With the cooperation of all Senators, we should be able to complete voting on these articles of impeachment within a reasonable amount of time and do so in an orderly and fair way for all concerned.

So, Mr. President, I repeat for Senators who may not have heard me make this announcement last evening, that there is going to be a motion to instruct the Sergeant at Arms to request the attendance of absent Senators. Once a quorum has been established and all Senators are in their seats, we will begin voting on the first article of impeachment, and we will continue until we complete the voting.

I ask and urge all Senators to be present and in their seats when we begin the voting and to remain in their seats during the voting, both in the interest of expediting the procedure, permitting the rollcall votes to occur in the shortest possible time so as to enable Senators to meet their other commitments, and also so as to maintain the decorum of the Senate during the voting.

QUORUM CALL

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum having been raised, the clerk will call the roll.

The legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 8]

Adams	Byrd	Mitchell
Biden	Conrad	Pressler
Boschwitz	Daschle	Roth
Bradley	Dole	Stevens
Breaux	Hatfield	Wirth

The PRESIDENT pro tempore. A quorum is not present.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Maine [Mr. MITCHELL] to instruct the Sergeant at Arms to request the attendance of absent Senators.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 93, nays 2, as follows:

[Rollcall Vote No. 253 Leg.]

(Subject: Motion to instruct Sergeant at Arms)

YEAS—93

Adams	Fowler	McClure
Armstrong	Garn	McConnell
Baucus	Glenn	Metzenbaum
Bentsen	Gore	Mikulski
Biden	Gorton	Mitchell
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boren	Grassley	Nickles
Boschwitz	Harkin	Nunn
Bradley	Hatch	Packwood
Breaux	Hatfield	Pell
Bryan	Heflin	Pressler
Bumpers	Heinz	Pryor
Burdick	Helms	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Chafee	Johnston	Rockefeller
Cochran	Kassebaum	Roth
Cohen	Kasten	Rudman
Conrad	Kennedy	Sanford
Cranston	Kerrey	Sarbanes
D'Amato	Kerry	Sasser
Danforth	Kohl	Shelby
Daschle	Lautenberg	Simon
DeConcini	Leahy	Simpson
Dixon	Levin	Specter
Dole	Lieberman	Stevens
Domenici	Lugar	Thurmond
Durenberger	Mack	Wallop
Exon	Matsunaga	Warner
Ford	McCain	Wirth

NAYS—2

Humphrey	Symms

NOT VOTING—5

Coats	Jeffords	Wilson
Dodd	Lott	

So the motion was agreed to.

The PRESIDENT pro tempore. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

The Senate will be in order. The Chair will not proceed until Senators have ceased their conversations.

The Senate and the galleries will be in order.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

The PRESIDENT pro tempore. Under the previous order, a quorum having been established, the Senate will resume its consideration of the articles of impeachment against Judge Alcee L. Hastings. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Henry K. Giugni, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Alcee L. Hastings, U.S. district judge for the southern district of Florida.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, the Senate deliberated yesterday for 7 hours on the articles of impeachment against Judge Alcee L. Hastings. We meet this morning to vote on the articles.

Before proceeding to the voting, I ask unanimous consent that Senators may be permitted, within 7 days from today, to have printed in the RECORD opinions or statements explaining their votes.

The PRESIDENT pro tempore. Hearing no objection, it is so ordered.

The majority leader is recognized.

Mr. MITCHELL. In response to a question from Senator BINGAMAN to the parties in the final argument on yesterday, Representative BRYANT from the House and Mr. Anderson for Judge Hastings stated that neither would object to the recording of an acquittal on articles II through V, and VII through IX without the taking of a vote by the Members of the Senate on those articles, if the Senate votes to acquit Judge Hastings on article I.

Senator BINGAMAN's question and the parties' response was based upon the position taken by the House in its post trial memorandum that it would be inconsistent to acquit Judge Hastings on article I and to convict him on these particular false statement articles.

To implement this agreement between the House and Judge Hastings, I ask unanimous consent that the majority leader be recognized if the Senate votes to acquit Judge Hastings on article I, for the purpose of propounding a unanimous-consent agreement on the recording of an acquittal on articles II through V, and VII through IX.

The PRESIDENT pro tempore. Without objection——

Mr. HEFLIN. I will reserve the right to object. I have some question in my mind as to whether or not article IX would fall into that category. Article IX may be different, and I feel that there ought to be a vote on article IX in that regard.

Mr. MITCHELL. Do I take the Senator's statement as objection to the unanimous-consent request?

Mr. HEFLIN. Well, yes, as in regards to article IX. The others, I think, fall into that category, but I do have some question on article IX.

If the leader wants to change it to a unanimous consent in that regard?

Mr. MITCHELL. Mr. President, I then inquire of counsel for the two parties whether they object to my restating the unanimous-consent request, but modifying it in the manner suggested by Senator HEFLIN.

Mr. BRYANT?

Mr. Manager BRYANT. There will be no objection on the part of the House to that.

Mr. MITCHELL. Mr. Anderson?

Mr. ANDERSON. No objection.

Mr. MITCHELL. Accordingly, Mr. President, I ask unanimous consent that the majority leader be recognized if the Senate votes to acquit Judge Hastings on article I for the purpose of propounding a unanimous-consent agreement on the recording of an acquittal on articles II through V and VII and VIII.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection. It is so ordered.

Mr. MITCHELL. Mr. President, on March 16, 1989, a unanimous-consent agreement was entered to provide that the voting records of any Senators excused from voting on all questions during the impeachment trial of Judge Alcee Hastings not be calculated to include any rollcall votes during the trial. The four Senators who have been excused from voting are the Senator from Indiana [Mr. COATS]; the Senator from Vermont [Mr. JEFFORDS]; the Senator from Mississippi [Mr. LOTT]; and the Senator from Florida [Mr. MACK].

Mr. DOLE. Mr. President, I want to establish, together with the majority leader, this is a unanimous-consent agreement on voting records; it is not a precedent for calculating voting records on any other occasion.

Mr. MITCHELL. Mr. President, the Republican leader is correct. As was stated on March 16, this agreement was entered for the protection of the Senate, not for the protection of individual Senators. Because these four Members were Members of the House of Representatives when the House deliberated on the Hastings impeachment, some might suggest that an appearance of prejudgment exists. Their excuse from participation is intended to protect against such an appearance.

Because the unanimous-consent agreement serves for this singular purpose and this purpose alone, there is no basis for using this agreement in the future for the protection of the voting records of individual Senators.

Mr. President, I would like to now repeat what I stated last evening and again this morning and request that all Senators remain in their seats during voting on whatever number of votes occur, for three purposes.

The first is to facilitate the handling of this matter in the most fair and appropriate manner for all concerned. That is and should be our overriding objective.

The second is to maintain the decorum of the Senate while these grave proceedings are underway.

And the third is to accommodate the interests of Senators themselves.

We will have possibly as many as 17 votes, possibly less, depending upon the outcome of the first vote. I ask that Senators remain in their seats during all of the votes to permit the calling of the roll just once on each vote so that it can be done in an orderly, proper manner and the shortest time possible will be required to elapse. That will not be possible if Senators, as they do from time to time, get up and walk around the well and go out to the cloakrooms and engage in other conversation during these proceedings. These are serious proceedings. They affect not only Judge Hastings, but they also affect the Senate and our system of Government. So far, the Senate has treated this matter with the significance which it deserves, and I urge upon my colleagues, having come this far in that fashion, let us complete the process in a proper manner.

The Chair will shortly instruct the Members of the Senate on the question to be put and the manner of response. I thank all Senators for their attention and courtesy until now and for what I know will be their continued attention and courtesy for Judge Hastings, to the House managers and to this entire matter.

Mr. BIDEN. Parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state his parliamentary inquiry.

Mr. BIDEN. Mr. President, the Constitution requires that two-thirds of the Senators be present for impeachment.

The PRESIDENT pro tempore. That is correct.

Mr. BIDEN. In light of the fact four Senators may be present but not voting, does that affect in anyway the requisite number of votes required for impeachment?

The PRESIDENT pro tempore. Four Senators have been excused and they will, therefore, not be counted.

Mr. BIDEN. I thank the Chair.

The PRESIDENT pro tempore. The clerk will read the first article.

Mr. NICKLES. Mr. President, parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state his inquiry.

Mr. NICKLES. In response to the question of the Senator from Delaware, if we have four Senators who are not voting, so they will not be counted, what is the number, if two-thirds is required? Is that number 67? Is that number 65?

The PRESIDENT pro tempore. Two-thirds of those present and voting.

Mr. NICKLES. So the number would be 67?

The PRESIDENT pro tempore. No. That would be a constitutional majority. That would be two-thirds of the Senators duly chosen and sworn.

Mr. NICKLES. Two-thirds of the Senators voting?

The PRESIDENT pro tempore. Two-thirds of the Senators who are present and voting.

ARTICLE I

The PRESIDENT pro tempore. The clerk will read the first article of impeachment.

The assistant legislative clerk read as follows:

ARTICLE I

From some time in the first of 1981 and continuing through October 9, 1981, Judge Hastings and William Borders, then a Washington, D.C. attorney, engaged in a corrupt conspiracy to obtain $150,000 from defendants in *United States v. Romano*, a case tried before Judge Hastings, in return for the imposition of sentences which would not require incarceration of the defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

The PRESIDENT pro tempore. The Chair will read, for the benefit of everyone present in the Chamber and in the galleries, paragraph 6 of rule XIX of the standing rules of the Senate which states as follows:

Whenever confusion arises in the Chamber or the galleries, or demonstrations of approval or disapproval are indulged in by the occupants of the galleries, it shall be the duty of the Chair to enforce order on his own initiative and without any point of order being made by a Senator.

The Chair would deeply appreciate the cooperation of everyone in the Chamber and in the gallery in maintenance of order.

VOTE ON ARTICLE I

The PRESIDENT pro tempore. The Chair reminds the Senate that each Senator, when his or her name is called, will stand in his or her place and vote guilty or not guilty. The question is on the first article.

Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty? The rollcall is automatic. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announced that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators wishing to vote?

The result was announced—guilty 69, not guilty 26, as follows:

[Rollcall Vote No. 254]

(Subject: Article I—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—69

Baucus	Fowler	McCain
Bentsen	Garn	McClure
Bond	Glenn	McConnell
Boren	Gore	Mitchell
Boschwitz	Gorton	Murkowski
Breaux	Gramm	Nickles
Bryan	Grassley	Nunn
Bumpers	Hatfield	Pell
Burns	Heinz	Pressler
Byrd	Helms	Reid
Chafee	Hollings	Riegle
Cochran	Humphrey	Robb
Cohen	Inouye	Rockefeller
Conrad	Johnston	Roth
Danforth	Kassebaum	Rudman
Daschle	Kasten	Sarbanes
DeConcini	Kennedy	Simon
Dixon	Kerrey	Simpson
Dole	Kerry	Stevens
Domenici	Kohl	Symms
Durenberger	Lautenberg	Thurmond
Exon	Lugar	Wallop
Ford	Matsunaga	Warner

NOT GUILTY—26

Adams	Graham	Moynihan
Armstrong	Harkin	Packwood
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Cranston	Lieberman	Specter
D'Amato	Metzenbaum	Wirth
Dodd	Mikulski	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this article of impeachment, 69 Senators have voted guilty, 26 Senators have voted not guilty. Two-thirds of the Senators present and voting having voted guilty, the verdict on article I is guilty.

ARTICLE II

The PRESIDENT pro tempore. The Chair now asks the clerk to read the second article.

The legislative clerk read as follows:

ARTICLE II

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings and William Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE II

The PRESIDENT pro tempore. The question is on the second article of impeachment.

Senators, how say you, is the respondent Alcee L. Hastings guilty or not guilty?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The result was announced—guilty 68, not guilty 27, as follows:

[Rollcall Vote No. 255]

(Subject: Article II—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—68

Baucus	Fowler	McCain
Bentsen	Garn	McClure
Bond	Glenn	McConnell
Boren	Gore	Mitchell
Boschwitz	Gorton	Murkowski
Breaux	Gramm	Nickles
Bryan	Grassley	Nunn
Bumpers	Hatfield	Pell
Burns	Heinz	Pressler
Byrd	Helms	Reid
Chafee	Hollings	Riegle
Cochran	Humphrey	Robb
Cohen	Inouye	Rockefeller
Conrad	Johnston	Roth
Danforth	Kassebaum	Rudman
Daschle	Kasten	Sarbanes
DeConcini	Kennedy	Simon
Dixon	Kerrey	Simpson
Dole	Kerry	Symms
Domenici	Kohl	Thurmond
Durenberger	Lautenberg	Wallop
Exon	Lugar	Warner
Ford	Matsunaga	

NOT GUILTY—27

Adams	Graham	Moynihan
Armstrong	Harkin	Packwood
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Cranston	Lieberman	Specter
D'Amato	Metzenbaum	Stevens
Dodd	Mikulski	Wirth

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this vote, there are 68 yeas, and 27 nays.

Two-thirds of the Senators present and voting, having voted guilty, the verdict on the second article is guilty.

Mr. MITCHELL addressed the Chair.

The PRESIDENT pro tempore. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that Judge Hastings and his counsel be permitted to be excused for the remainder of the votes, if they so desire.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HASTINGS. Thank you, Mr. President.

The PRESIDENT pro tempore. The Chair thanks Judge Hastings and his party.

ARTICLE III

The PRESIDENT pro tempore. The clerk will state the third article. The assistant legislative clerk read as follows:

ARTICLE III

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a

criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., to modify the sentences of defendants in *United States* v. *Romano*, a case tried before Judge Hastings, from a term in the Federal penitentiary to probation in return for a bribe from those defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE III

The PRESIDENT pro tempore. The question is on the third article of impeachment. The rollcall is automatic. Senators, how say you? Is the respondent Alcee L. Hastings guilty or not guilty? The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—guilty 69, not guilty 26, as follows:

[Rollcall Vote No. 256]

(Subject: Article III—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—69

Baucus	Fowler	McCain
Bentsen	Garn	McClure
Bond	Glenn	McConnell
Boren	Gore	Mitchell
Boschwitz	Gorton	Murkowski
Breaux	Gramm	Nickles
Bryan	Grassley	Nunn
Bumpers	Hatfield	Pell
Burns	Heinz	Pressler
Byrd	Helms	Reid
Chafee	Hollings	Riegle
Cochran	Humphrey	Robb
Cohen	Inouye	Rockefeller
Conrad	Johnston	Roth
Danforth	Kassebaum	Rudman
Daschle	Kasten	Sarbanes
DeConcini	Kennedy	Simon
Dixon	Kerrey	Simpson
Dole	Kerry	Stevens
Domenici	Kohl	Symms
Durenberger	Lautenberg	Thurmond
Exon	Lugar	Wallop
Ford	Matsunaga	Warner

NOT GUILTY—26

Adams	Graham	Moynihan
Armstrong	Harkin	Packwood
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Cranston	Lieberman	Specter
D'Amato	Metzenbaum	Wirth
Dodd	Mikulski	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. Upon this article of impeachment, 69 Senators have voted guilty; 26 Senators have voted not guilty.

Two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Alcee L. Hastings, is guilty as charged in this article.

ARTICLE IV

The PRESIDENT pro tempore. The clerk will now read the fourth article of impeachment.

The legislative clerk read as follows:

ARTICLE IV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., in connection with a payment on a bribe, to enter an order returning a substantial amount of property to the defendants in *United States v. Romano*, a case tried before Judge Hastings. Judge Hastings had previously ordered that property forfeited.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

The PRESIDENT pro tempore. The question on article IV is: Is the respondent, Alcee L. Hastings, guilty or not guilty?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—guilty 67, not guilty 28, as follows:

[Rollcall Vote No. 257]

(Subject: Article IV—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—67

Baucus	Fowler	McClure
Bentsen	Garn	McConnell
Bond	Glenn	Mitchell
Boren	Gore	Murkowski
Boschwitz	Gramm	Nickles
Breaux	Grassley	Nunn
Bryan	Hatfield	Pressler
Bumpers	Heinz	Reid
Burns	Helms	Riegle
Byrd	Hollings	Robb
Chafee	Humphrey	Rockefeller
Cochran	Inouye	Roth
Cohen	Johnston	Rudman
Conrad	Kassebaum	Sarbanes
Danforth	Kasten	Simon
Daschle	Kennedy	Simpson
DeConcini	Kerrey	Stevens
Dixon	Kerry	Symms
Dole	Kohl	Thurmond
Domenici	Lautenberg	Wallop
Durenberger	Lugar	Warner
Exon	Matsunaga	
Ford	McCain	

NOT GUILTY—28

Adams	Graham	Packwood
Armstrong	Harkin	Pell
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Cranston	Lieberman	Specter
D'Amato	Metzenbaum	Wirth
Dodd	Mikulski	
Gorton	Moynihan	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. Upon this article of impeachment, 67 Senators have voted guilty; 28 Senators have voted not guilty.

Two-thirds of the Senators present having voted guilty, the Senate adjudges the respondent, Alcee L. Hastings, guilty as charged in the fourth article.

ARTICLE V

The PRESIDENT pro tempore. The clerk will now read the fifth article of impeachment.

The bill clerk read as follows:

ARTICLE V

From January 18, 1989, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' appearance at the Fontainebleau Hotel in Miami Beach, Florida, on September 16, 1981, was not part of a plan to demonstrate his participation in a bribery scheme with William Borders of Washington, D.C., concerning *United States* v. *Romano*, a case tried before Judge Hastings, and that Judge Hastings expected to meet Mr. Borders at that place and on that occasion.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE V

The PRESIDENT pro tempore. The question is on the fifth article of impeachment. Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Have all Senators voted?

The result was announced—guilty 67, not guilty 28, as follows:

[Rollcall Vote No. 258]

(Subject: Article V—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—67

Baucus	Domenici	Kassebaum
Bentsen	Durenberger	Kasten
Bond	Exon	Kennedy
Boren	Ford	Kerrey
Boschwitz	Fowler	Kerry
Breaux	Garn	Kohl
Bryan	Glenn	Lautenberg
Bumpers	Gore	Lugar
Burns	Gorton	Matsunaga
Byrd	Gramm	McCain
Chafee	Grassley	McClure
Cochran	Hatfield	McConnell
Cohen	Heinz	Mitchell
Danforth	Helms	Murkowski
Daschle	Hollings	Nickles
DeConcini	Humphrey	Nunn
Dixon	Inouye	Pressler
Dole	Johnston	Reid

Riegle	Sarbanes	Thurmond
Robb	Simon	Wallop
Rockefeller	Simpson	Warner
Roth	Stevens	
Rudman	Symms	

NOT GUILTY—28

Adams	Graham	Packwood
Armstrong	Harkin	Pell
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Conrad	Lieberman	Specter
Cranston	Metzenbaum	Wirth
D'Amato	Mikulski	
Dodd	Moynihan	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this question, 67 Senators have voted guilty, 28 Senators have voted not guilty. Two-thirds of the Members present having voted guilty the verdict on article V is guilty.

ARTICLE VI

The PRESIDENT pro tempore. The clerk will read the sixth article of impeachment.

The legislative clerk read as follows:

ARTICLE VI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings did not expect William Borders, of Washington, D.C. to appear at Judge Hastings' room in the Sheraton Hotel in Washington, D.C., on September 12, 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting, removal from office.

VOTE ON ARTICLE VI

The PRESIDENT pro tempore. The question is on the sixth article of impeachment. Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty?

The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there other Senators wishing to vote?

The result was announced—guilty 48, not guilty 47, as follows:

[Rollcall Vote No. 259]

(Subject: Article VI—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—48

Baucus	DeConcini	Hollings
Bentsen	Dole	Humphrey
Boren	Exon	Inouye
Breaux	Ford	Johnston
Bryan	Fowler	Kassebaum
Burns	Garn	Kasten
Byrd	Glenn	Kerrey
Chafee	Gramm	Lugar
Cochran	Grassley	Matsunaga
Danforth	Hatfield	McClure
Daschle	Helms	Mitchell
Nickles	Rockefeller	Stevens
Pell	Roth	Symms
Pressler	Sarbanes	Thurmond
Reid	Simon	Wallop
Robb	Simpson	Warner

NOT GUILTY—47

Adams	Durenberger	McConnell
Armstrong	Gore	Metzenbaum
Biden	Gorton	Mikulski
Bingaman	Graham	Moynihan
Bond	Harkin	Murkowski
Boschwitz	Hatch	Nunn
Bradley	Heflin	Packwood
Bumpers	Heinz	Pryor
Burdick	Kennedy	Riegle
Cohen	Kerry	Rudman
Conrad	Kohl	Sanford
Cranston	Lautenberg	Sasser
D'Amato	Leahy	Shelby
Dixon	Levin	Specter
Dodd	Lieberman	Wirth
Domenici	McCain	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this article of impeachment, 48 Senators have voted guilty; 47 Senators have voted not guilty. Less than two-thirds of the Members present having voted guilty, the Senate judges that the respondent, Alcee L. Hastings, is not guilty as charged in this article.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, under rule XXIII, if the person impeached shall be convicted upon any article by the votes of two-thirds of the Members present, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment.

The Rules Committee report accompanying the most recent changes in this rule, in 1986 stated:

Since, under the prevailing view a two-thirds vote to convict on any article operates as an automatic removal from office, the Senate may not wish to vote the other articles.

Accordingly, Mr. President, after reviewing the matter and discussing it with Senate counsel and the distinguished Republican leader, and the House counsel, it is my judgment that the Senate need not vote on every one of the articles of impeachment.

I have reviewed the articles, and I believe it appropriate that we continue voting through article IX, and that we also vote on articles XVI and XVII.

I, therefore, ask unanimous consent that the Senate not vote on articles X through XV inclusive of the articles of impeachment.

The PRESIDENT pro tempore. Is there objection?

The Chair hears none. It is so ordered.

Mr. MITCHELL. Articles X through XV inclusive; not voting on those. We will continue voting through article IX and then to articles XVI and XVII, to conclude voting.

I thank my colleagues.

Mr. LEVIN. Mr. President, reserving the right to object, and I will not object, I had intended to vote guilty on article XV.

Mr. MITCHELL. I thank the Senator.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ARTICLE VII

The PRESIDENT pro tempore. The Clerk will read the seventh article of impeachment.

The bill clerk read as follows:

ARTICLE VII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath, made a false statement which was intended to mislead the trier of fact.

The false statement concerned Judge Hastings' motive for instructing a law clerk, Jeffrey Miller, to prepare an order on October 5, 1981, in *United States* v. *Romano*, a case tried before Judge Hastings, returning a substantial portion of property previously ordered forfeited by Judge Hastings. Judge Hastings stated in substance that he so instructed Mr. Miller primarily because Judge Hastings was concerned that the order would not be completed before Mr. Miller's scheduled departure, when in fact the instruction on October 5, 1981, to prepare such order was in furtherance of a bribery scheme concerning that case.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE VII

The PRESIDENT pro tempore. The question is on article VII.

Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—guilty 69, not guilty 26, as follows:

[Rollcall Vote No. 260]

(Subject: Article VII—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—69

Baucus	Domenici	Kasten
Bentsen	Durenberger	Kennedy
Bond	Exon	Kerrey
Boren	Ford	Kerry
Boschwitz	Fowler	Kohl
Breaux	Garn	Lautenberg
Bryan	Glenn	Lugar
Bumpers	Gore	Matsunaga
Burns	Gorton	McCain
Byrd	Gramm	McClure
Chafee	Grassley	McConnell
Cochran	Hatfield	Mitchell
Cohen	Heinz	Murkowski
Conrad	Helms	Nickles
Danforth	Hollings	Nunn
Daschle	Humphrey	Pell
DeConcini	Inouye	Pressler
Dixon	Johnston	Reid
Dole	Kassebaum	Riegle

Robb	Sarbanes	Symms
Rockefeller	Simon	Thurmond
Roth	Simpson	Wallop
Rudman	Stevens	Warner

NOT GUILTY—26

Adams	Graham	Moynihan
Armstrong	Harkin	Packwood
Biden	Hatch	Pryor
Bingaman	Heflin	Sanford
Bradley	Leahy	Sasser
Burdick	Levin	Shelby
Cranston	Lieberman	Specter
D'Amato	Metzenbaum	Wirth
Dodd	Mikulski	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this question, there are 69 guilty, 26 not guilty. Two-thirds of the Senators present having voted guilty, the verdict is guilty on article VII.

ARTICLE VIII

The PRESIDENT pro tempore. The clerk will read article VIII.

The assistant legislative clerk read as follows:

ARTICLE VIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' October 5, 1981, telephone conversation with William Borders, of Washington, DC, was in fact about writing letters to solicit assistance for Hemphill Pride of Columbia, South Carolina, when in fact it was a coded conversation in furtherance of a conspiracy with Mr. Borders to solicit a bribe from defendants in *United States* v. *Romano*, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE VIII

The PRESIDENT pro tempore. The question is on the eighth article. Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty? The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Have all Senators in the Chamber voted?

The result was announced—guilty 68, not guilty 27, as follows:

[Rollcall Vote No. 261]

(Subject: Article VIII—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—68

Baucus	Bumpers	Danforth
Bentsen	Burns	Daschle
Bond	Byrd	DeConcini
Boren	Chafee	Dixon
Boschwitz	Cochran	Dole
Breaux	Cohen	Domenici
Bryan	Conrad	Exon
Ford	Kasten	Pressler
Fowler	Kennedy	Reid
Garn	Kerrey	Riegle
Glenn	Kerry	Robb
Gore	Kohl	Rockefeller
Gorton	Lautenberg	Roth
Gramm	Lugar	Rudman
Grassley	Matsunaga	Sarbanes
Hatfield	McCain	Simon
Heinz	McClure	Simpson
Helms	McConnell	Stevens
Hollings	Mitchell	Symms
Humphrey	Murkowski	Thurmond
Inouye	Nickles	Wallop
Johnston	Nunn	Warner
Kassebaum	Pell	

NOT GUILTY—27

Adams	Durenberger	Mikulski
Armstrong	Graham	Moynihan
Biden	Harkin	Packwood
Bingaman	Hatch	Pryor
Bradley	Heflin	Sanford
Burdick	Leahy	Sasser
Cranston	Levin	Shelby
D'Amato	Lieberman	Specter
Dodd	Metzenbaum	Wirth

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On this question, there are 68 guilty, 27 not guilty. Two-thirds of the number present having voted guilty, the Senate adjudges that the respondent Alcee L. Hastings is guilty as charged on this article.

ARTICLE IX

The PRESIDENT pro tempore. The question now occurs on article IX, which the clerk will read.

The bill clerk read as follows:

ARTICLE IX

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that three documents that purported to be drafts of letters to assist Hemphill Pride, of Columbia, South Carolina, had been written by Judge Hastings on October 5, 1981, and were the letters referred to by Judge Hastings in his October 5, 1981, telephone conversation with William Borders, of Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE IX

The PRESIDENT pro tempore. On article IX, Senators, how say you? Is the respondent Alcee L. Hastings guilty or not guilty. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDING OFFICER. Have all Senators in the Chamber voted?

The result was announced—guilty 70, not guilty 25, as follows:

[Rollcall Vote No. 262]

(Subject: Article IX—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—70

Baucus	Glenn	McClure
Bentsen	Gore	McConnell
Bond	Gorton	Mitchell
Boren	Gramm	Murkowski
Boschwitz	Grassley	Nickles
Breaux	Hatfield	Nunn
Bryan	Heinz	Pell
Bumpers	Helms	Pressler
Burns	Hollings	Reid
Byrd	Humphrey	Riegle
Chafee	Inouye	Robb
Cochran	Johnston	Rockefeller
Cohen	Kassebaum	Roth
Conrad	Kasten	Rudman
Danforth	Kennedy	Sarbanes
Daschle	Kerrey	Simon
DeConcini	Kerry	Simpson
Dixon	Kohl	Stevens
Dole	Lautenberg	Symms
Domenici	Leahy	Thurmond
Exon	Levin	Wallop
Ford	Lugar	Warner
Fowler	Matsunaga	
Garn	McCain	

NOT GUILTY—25

Adams	Durenberger	Packwood
Armstrong	Graham	Pryor
Biden	Harkin	Sanford
Bingaman	Hatch	Sasser
Bradley	Heflin	Shelby
Burdick	Lieberman	Specter
Cranston	Metzenbaum	Wirth
D'Amato	Mikulski	
Dodd	Moynihan	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On the ninth article of impeachment, 70 Senators voted guilty, and 25 Senators voted not guilty.

Two-thirds of the Members having voted guilty, the verdict is guilty on article number IX.

ARTICLES OF IMPEACHMENT X THROUGH XV

The PRESIDENT pro tempore. Under the previous order, the Senate will not vote on articles X through XV inclusive.

ARTICLE XVI

The PRESIDENT pro tempore. The clerk will read article No. XVI.

The assistant legislative clerk read as follows:

ARTICLE XVI

From July 15, 1985, to September 15, 1985, Judge Hastings was the supervising judge of a wiretap instituted under chapter 119 of title 18, United States Code (added by title III of the Omnibus Crime Control and Safe Streets Act of 1968). The wiretap was part of certain investigations then being conducted by law enforcement agents of the United States.

As supervising judge, Judge Hastings learned highly confidential information obtained through the wiretap. The documents disclosing this information, presented to Judge Hastings as the supervising judge, were Judge Hastings' sole source of the highly confidential information.

On September 6, 1985, Judge Hastings revealed highly confidential information that he learned as the supervising judge of the wiretap, as follows: On the morning of September 6, 1985, Judge Hastings told Stephen Clark, the Mayor of Dade County, Florida,

to stay away from Kevin "Waxy" Gordon, who was "hot" and was using the Mayor's name in Hialeah, Florida.

As a result of this improper disclosure, certain investigations then being conducted by law enforcement agents of the United States were thwarted and ultimately terminated.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE XVI

The PRESIDENT pro tempore. The question is on the 16th article of impeachment. Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Are there other Senators in the Chamber who desire to vote?

The result was announced—guilty 0, not guilty 95, as follows:

[Rollcall Vote No. 263]

(Subject: Article XVI—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—0

NOT GUILTY—95

Adams	Fowler	McConnell
Armstrong	Garn	Metzenbaum
Baucus	Glenn	Mikulski
Bentsen	Gore	Mitchell
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Gramm	Nickles
Boren	Grassley	Nunn
Boschwitz	Harkin	Packwood
Bradley	Hatch	Pell
Breaux	Hatfield	Pressler
Bryan	Heflin	Pryor
Bumpers	Heinz	Reid
Burdick	Helms	Riegle
Burns	Hollings	Robb
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Cochran	Johnston	Rudman
Cohen	Kassebaum	Sanford
Conrad	Kasten	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerrey	Shelby
Danforth	Kerry	Simon
Daschle	Kohl	Simpson
DeConcini	Lautenberg	Specter
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Lieberman	Thurmond
Domenici	Lugar	Wallop
Durenberger	Matsunaga	Warner
Exon	McCain	Wirth
Ford	McClure	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. Have all Senators in the Chamber voted?

On this question, no Senators have voted guilty; 95 Senators have voted not guilty. The verdict on article number XVI is not guilty.

RECOGNITION OF MR. BYRD FOR PRESIDING FOR 100 HOURS

The PRESIDENT pro tempore. The majority leader.

Mr. MITCHELL. Mr. President, I have two announcements to make.

First, as of just a few moments ago, the distinguished President pro tempore of the Senate became the first Member of the Senate to have presided over the Senate floor 100 hours this year, thereby earning the Golden Gavel. I think he deserves a round of applause.

[Applause.]

Mr. MITCHELL. I think it is fair to say that rarely in the Senate's history has the majority leader felt more secure than when the President pro tempore is on the floor, than when this majority leader is standing here and that President pro tempore is sitting there.

We are very grateful to the President pro tempore.

SCHEDULE

Mr. MITCHELL. I make the announcement that after this final vote on article XVII, there will be no further rollcall votes today. There will be no rollcall votes on Monday. The Senate will proceed to the Eastern Airlines matter Monday, but there will be no votes on that day.

There will be votes on Tuesday, so Senators are urged to be present on Tuesday. It is possible now to predict when the votes will occur, but they are likely to occur in the morning, as there are a number of matters which will be taken up Tuesday, and we are going to have a very busy week from Tuesday through at least Friday next week.

I thank Senators for the cooperation they have demonstrated on this matter. I believe the Senate conducted itself admirably in the conduct of these proceedings, and I ask Senators to continue the decorum through this final vote.

I thank my colleagues, and I yield the floor, Mr. President.

ARTICLE XVII

The PRESIDENT pro tempore. The question occurs on the 17th and final article, which the clerk will read.

The legislative clerk read as follows:

ARTICLE XVII

Judge Hastings, who as a Federal judge is required to enforce and obey the Constitution and laws of the United States, to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to perform the duties of his office impartially, did, through—

(1) a corrupt relationship with William Borders of Washington, D.C.;

(2) repeated false testimony under oath at Judge Hastings' criminal trial;

(3) fabrication of false documents which were submitted as evidence at his criminal trial; and

(4) improper disclosure of confidential information acquired by him as supervisory judge of a wiretap;

undermine confidence in the integrity and impartiality of the judiciary and betray the trust of the people of the United States, thereby bringing disrepute on the Federal courts and the administration of justice by the Federal courts.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

VOTE ON ARTICLE XVII

The PRESIDENT pro tempore. On the 17th Article of Impeachment, Senators, How say you? Is the respondent, Alcee L. Hastings, guilty or not guilty? The clerk will call the roll.

Mr. CHAFEE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. CHAFEE. To find guilty on this article, does one have to agree with each of the four allegations?

The PRESIDENT pro tempore. This is for each Senator to determine in his own mind and in his own conscience and in accordance with his oath that he will do impartial justice under the Constitution and law.

It is the Chair's opinion, if the Senator in his own conscience and based on the facts as he understands them determines that on any one of the paragraphs listed that Judge Alcee L. Hastings has undermined confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the United States, he should vote accordingly.

Mr. LEAHY. Mr. President, a further parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Vermont will State his parliamentary inquiry.

Mr. LEAHY. Is the Senator from Vermont correct in understanding what the distinguished Presiding Officer said earlier that, if a Senator felt that to vote guilty on this he would have to find on each and every one, he would be within his rights to set for himself that as the standard?

The PRESIDENT pro tempore. The Chair has not rendered any such opinion.

Mr. LEAHY. A further parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. LEAHY. Mr. President, would a Senator be within his or her rights to interpret this as saying that a guilty or not guilty verdict would have to be based on a finding on each one of the four items as either guilty or not guilty?

The PRESIDENT pro tempore. The Senator would be within his or her right to so find.

Mr. LEAHY. I thank the Chair.

The PRESIDENT pro tempore. The clerk has read article XVII.

The question is, Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty,

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDENT pro tempore. Have all Senators voted?

The result was announced—guilty 60, not guilty 35, as follows:

[Rollcall Vote No. 264]

(Subject: Article XVII—Court of Impeachment—Judge Alcee L. Hastings)

GUILTY—60

Baucus	Garn	Lugar
Bond	Glenn	McCain
Boren	Gorton	McClure
Boschwitz	Gramm	McConnell
Bumpers	Grassley	Murkowski
Burns	Hatfield	Nickles
Byrd	Heinz	Nunn
Chafee	Helms	Pressler
Cochran	Hollings	Riegle
Cohen	Humphrey	Robb
Conrad	Inouye	Rockefeller
Danforth	Johnston	Roth
DeConcini	Kassebaum	Rudman
Dixon	Kasten	Sarbanes
Dole	Kennedy	Simpson
Domenici	Kerrey	Stevens
Durenberger	Kerry	Symms
Exon	Kohl	Thurmond
Ford	Lautenberg	Wallop
Fowler	Levin	Warner

NOT GUILTY—35

Adams	Dodd	Moynihan
Armstrong	Gore	Packwood
Bentsen	Graham	Pell
Biden	Harkin	Pryor
Bingaman	Hatch	Reid
Bradley	Heflin	Sanford
Breaux	Leahy	Sasser
Bryan	Lieberman	Shelby
Burdick	Matsunaga	Simon
Cranston	Metzenbaum	Specter
D'Amato	Mikulski	Wirth
Daschle	Mitchell	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—5

Coats	Lott	Wilson
Jeffords	Mack	

The PRESIDENT pro tempore. On the 17th article, 60 Senators having voted guilty, 35 Senators having voting not guilty. Less than two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Alcee L. Hastings, is not guilty as charged in the article.

May there be order in the Senate? The Senate will be in order.

JUDGMENT

The PRESIDENT pro tempore. The Chair directs the judgment to be entered in accordance with the judgment of the Senate as follows:

The Senate, having tried Alcee L. Hastings, U.S. district judge for the southern district of Florida, upon 17 articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senate present having found him guilty of the charges contained in articles I, II, III, IV, V, VII, VIII, and IX of the articles of impeachment: It is therefore,

Ordered and adjudged, That the said Alcee L. Hastings be, and is hereby, removed from office.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I send an order to the desk and ask that it be stated.

The PRESIDENT pro tempore. The clerk will report the order.

The legislative clerk read as follows:

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives the judgment of the Senate in the case of Alcee L. Hastings, and transmit a certified copy of the judgment to each.

The PRESIDENT pro tempore. Without objection, the order will be entered.

The majority leader is recognized.

ADJOURNMENT SINE DIE OF COURT OF IMPEACHMENT

Mr. MITCHELL. Mr. President, I move that the Senate, sitting as a court of impeachment for the articles against Alcee L. Hastings, adjourn sine die.

The motion was agreed to; and, at 12:15 p.m., the Senate, sitting as a court of impeachment, adjourned sine die.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein for up to 5 minutes each, to last until the hour of 2 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered. Accordingly, there will now be a period for the transaction of morning business which will expire at 2 p.m. and each Senator is permitted to speak up to 5 minutes each.

Mr. CRANSTON addressed the Chair.

The PRESIDENT pro tempore. The Senator from California [Mr. CRANSTON].

CIVILIZATION BY THE BAY

Mr. CRANSTON. Mr. President, there have been a number of accolades about how Californians behaved in the stress and the chaos of Tuesday's earthquake. I saw this first-hand when I flew to the bay area yesterday.

No one has better characterized the grace, courage, and altruism California demonstrated than Mary McGrory in yesterday's Washington Post. Mary catches the essence of what I believe is the evolving character of California. This is from Mary McGrory's column, entitled "Civilization by the Bay," which appeared in the Washington Post yesterday.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 19, 1989]

CIVILIZATION BY THE BAY

(By Mary McGrory)

The earthquake has brought good news and bad. The bad is fallen bridges, collapsed freeways, people trapped in wreckage. The good news is that Californians are coping in a manner calculated to make us look at them anew.

We tend to laugh at our most populous, most beautiful state. We envy its inhabitants for their flowers, their sunshine, their long white beaches, and we take it out on them by saying they're ditsy. Their hedonism, their self-absorption, their trendiness—who gave us palimony and the catshrink?—make them the butt of endless gibes.

We laugh at them for "being in touch with their feelings," for putting braces on their teeth when they're 45 and for asking strangers what their sign is. Cartoonist Garry Trudeau summed it up in the strip where Boopsie, his quintessential Southern Californian, is made a member of the state's "self-esteem commission."

We were wrong. They are giving us lessons in how to behave with style under impossible conditions.

From the first moment of the earthquake, with Candlestick Park poised for the third game of the local World Series, Californians showed that they understand the first law of life: Never make a bad situation worse.

The potential for mass death in the stadium was horrendous. Sixty-two thousand people kept their heads, listened to ushers who told them to wait. We know the death toll at European soccer matches, where the panic-stricken trample the small and the weak and suffocate them.

San Francisco's tradition as our most civilized city was upheld. According to sportswriters-turned-disaster-chroniclers, the ballplayers hurried out of the dugout onto the field and summoned their families to join them, while the fans in the stand prepared to file out. After the first shock, the shaken-up survivors, elated to be still there, applauded.

A standing ovation for an earthquake?

Only in California.

Catastrophe does not always bring out the best in people, as we know from Hurricane Hugo. Remember the looting in St. Croix and the suburbs of Charleston, S.C. A tactful meteorologist from St. Croix said on National Public Radio that "while some people behaved very well, others individualized."

Californians did not "individualize." They were too busy pitching in. In a brilliant dispatch from the site of the collapse of the four-lane Oakland freeway, Amy Stevens reported in The Washington Post that nearby residents rushed out with bandages, sheets, ropes, first-aid kits and ladders.

In California, the threat of earthquake hangs over the flowers and the waves. It is so much discussed and prepared for that the California Seismic Safety Commission was constrained to issue a statement calculated to put down soothsayers who wanted to report a sharp change in their poodles' deportment as a sure sign that the earth was about to move:

"Predictions based on clairvoyance, headaches, animal behavior, astrology and other bogus methods have no basis in science and should be categorically disregarded."

But when the real thing came—"a rocker, not a roller," as one philosophical Californian called it—people behaved as if they had been trained from childhood on how to respond. They helped their police and firefighters; they helped their neighbors. As their world literally crumbled around them, they went out and did what they could. No sitting in the ashes, no wailing for the dead, just a fierce concentration on saving the living trapped under the debris.

Public officials, wearing suits and ties and an air of calm, told us on television what they knew. The lieutenant governor, Leo McCarthy, invited people to call his office for information. They were crisis-managing a situation of unfathomed chaos and sorrow.

I remember such a phenomenon in a newsroom when President John F. Kennedy was assassinated. The big room at the late Washington Star fell preternaturally quiet. Editors gave instructions to reporters as if in the presence of the dead. People inquired for each other's welfare, brought them food, urged them to go home, did not argue. It was a tribute of sorts.

Californians have incomparably blue skies, dark trees, white sands, redwoods and a sense of well-being. They know they have to pay for living in a paradise that is almost completely bisected by the San Andreas fault.

Californians may end up convincing Calvinists who live in colder states of the virtue of the good life. From what we've seen of California in adversity so far, being good to themselves can make people good to others, too.

I thank the Senator from New York for his courtesy.

I yield the floor.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I would like to take a few moments. I know I have colleagues who are waiting to speak. I wanted to thank and compliment the staff of our committee, the Impeachment Committee, that considered the articles against Alcee L. Hastings.

First I want to compliment and thank the vice chair, the Senator from Pennsylvania [Mr. SPECTER], for the excellent work that he did on the committee and the leadership he provided. It was a pleasure to work with him, and as always I was extremely impressed with his legal mind and his conscientious approach to the very difficult issue we had.

I also want to thank the other committee members. I believe we had a very attentive and conscientious committee. We worked hard at preparing a good record so the Senate could consider this matter appropriately, and I believe we did so.

I also thank the counsel that helped us. Mike Davidson, of course, who is the Senate counsel, did a superb job, as he always does. I appreciate that.

In addition we had counsel for the Impeachment Committee, Elaine Stone, Mark Klugheit, and Bruce McBarnette, who, all three, helped tremendously with our understanding of the facts and our preparation of the record to present to the Senate, and the preparation of the statements we made to the Senate.

Also I want to thank the staff of the Impeachment Committee, Tony Harvey, from the Rules Committee, Casey McGannon, Angela Muenzer, Marilyn Poker, Isabel McVeigh, and many others who worked with them. I think their work was superb.

As I have indicated in other places, I also believe the House managers and their attorneys did an excellent job, and Judge Hastings and his attorneys certainly did a very professional job presenting their case as well.

Mr. President, I have voted "not guilty" on each of the 17 articles of impeachment presented by the House against Judge Alcee L. Hastings. I will take a few minutes of the Senate's time to explain my reasons.

The charges brought by the House against Judge Hastings are extremely serious. He is accused, in effect, of having sold his office in the hope of financial gain in 1981, of having lied repeatedly from the witness stand when brought to trial on bribery conspiracy charges in 1983, and of having disclosed confidential information presented to him in his capacity as the supervising judge of a Federal wiretap in 1985. In short, he stands accused of a repeated betrayal of the public trust. If guilty of these offenses, he surely has no place on the Federal bench.

However, after listening to nearly 4 weeks of testimony and reading and reviewing both the evidence and the submissions of the parties, I do not find that the evidence presented constitutes adequate proof that Judge Hastings is guilty of the charges against him. That feeling is not the product of any want of diligence on the part of the House managers. They and their counsel have prosecuted this case with skill and with care. Nor is that feeling the product of any notion that the case against Judge Hastings has been pursued for improper purpose. I believe that the judges of the U.S. Court of Appeals for the 11th Circuit who were appointed to serve as an investigating committee into the bribery conspiracy and false statement charges, as well as the House of Representatives, properly concluded that there was sufficient evidence of possible wrongdoing so as to merit the filing of articles of impeachment against Judge Hastings. It is simply my conclusion that the evidence, although furnishing grounds for investigation and trial, does not provide a sound basis upon which I can vote for conviction.

Our system of jurisprudence requires that in any proceeding in which serious charges of wrongdoing are leveled against an individual, two basic principles apply. First, is the bedrock principle that each individual is presumed innocent of charges brought against him unless adequate proof is presented to the contrary.

Here, perhaps due to the particular circumstances of this proceeding, I found that that principle remained, as it should, in the forefront as we considered the evidence. Judge Hastings came before the Senate accused of having conspired to solicit a bribe from two criminal defendants in his court. In 1983, a jury had acquitted him of that same charge. I do not subscribe to the view that that verdict was binding upon the Senate, or that we should deem it conclusive on the question of Judge Hastings' guilt or innocence. Our responsibility was different from that of the jury which heard the criminal charges against Judge Hastings, and I do not believe that its determination that guilt had not been proven beyond a reasonable doubt relieved us of our burden to determine whether Judge Hastings had been shown unfit to hold his high position of public trust. But that jury verdict did serve as an ever-present reminder that Judge Hastings, as any accused, stood before us a presumptively innocent man.

The second fundamental principle, a corollary of the first, is that when the Government accuses an individual of wrongdoing, it must shoulder the burden of proving that the accused is truly guilty of the charge. That is true whether the individual is on trial for the alleged violation of the criminal laws or is before the Senate on articles of impeachment.

Counsel for Judge Hastings has argued that it may be proper to require proof beyond a reasonable doubt in order to remove him from office. But this is not a criminal proceeding in which the prosecutor should be held to proof beyond a reasonable doubt. Judge Hastings is not here in jeopardy of his life or personal liberty.

On the other hand, I am not persuaded by the House managers' contention that we should be guided by a simple preponderance of the evidence standard. That standard would permit removal upon the conclusion that it is more probable than not that Judge Hastings engaged in the wrongdoing with which he is charged. This is not a routine civil case, where, for example, a property dispute between two individuals must be resolved. Extremely important interests, both private and

public, are at stake. For Judge Hastings, his Federal judgeship, his ability to serve in other positions of public service and his reputation are all at risk. For the public, its interests lie not only in seeing that judges who are unworthy of its trust are removed from office, but also, that its judges can make the difficult decisions that are demanded of them, knowing that they cannot lightly be swept from office.

For me, the proper measure in this case falls somewhere between proof beyond a reasonable doubt and a simple weighing of probabilities. Whether that place be called "clear and convincing" or some other legal standard be formulated, it is, at bottom, simply that point along the continuum where we would feel sufficiently convinced that Judge Hastings committed the offense of which he stands accused, so that our duty would lie in favor of his removal. For each of us, that may well be a different place, and I suspect that there will be different judgments made upon this body of evidence. But for me, the proof did not carry me to the necessary degree of certainty.

Article I of the articles of impeachment charges Judge Hastings with having conspired with William Borders to solicit a bribe from Frank and Tom Romano, two brothers whose criminal case was pending before Judge Hastings. The House managers' proof on article I is circumstantial. William Borders has refused to testify in response to the Impeachment Trial Committee's subpoena, choosing incarceration instead. We are left with no testimony from any wintess who claims to have heard any discussion between Judge Hastings and William Borders which, on its face, plainly pertained to the alleged conspiracy. We likewise have no piece of physical evidence which documents any such discussion.

The closest we come to anything that could even be urged as direct evidence of Judge Hasting's involvement in the conspiracy is the conversation between the two on October 5, 1981. The conversation, at face value, concerns Judge Hastings' having drafted letters to assist their mutual friend, Hemphill Pride. It is said by the House, however, to be a coded discussion in which Borders tells Judge Hastings that the bribery deal is still on track, even though the Judge was late in issuing the Romano forfeiture order that Borders had promised. According to the House, Judge Hastings' statement that he has drafted the "letters to Hemp" means that the Romano order has been written, Borders' statement that "he wrote some things down for me," is a reference to the $25,000 downpayment that he received from the undercover agent on September 19, and Borders' comment that "I was supposed to go back and get some more things," is a reference to the arrangement, made on September 19, that he would return for the balance of the bribe money.

I am not persuaded. it seems unlikely to me that Judge Hastings and Borders would have constructed a code as a means of communication with one another and then have used it over their own telephones, particularly in light of evidence that Judge Hastings had some concern that his telephones were tapped and that Borders had a well-developed system of making pay phone to pay phone calls. I also find the House Manager's interpretation of the conversation to be strained. It strikes me as implausible that Borders, in order to deliver the simple message that the deal was still on, would elaborately relay information that was already more than 2 weeks old. Having listened to and examined the words of that conversation, I find it arguably innocuous, and in any event, too ambiguous to be treated as significant evidence of guilt.

What we do have in this case is a array of circumstantial proof from which inferences of guilt could be drawn. We have a pattern of contacts between Judge Hastings and William Borders whose timing appears suspicious when set against both the backdrop of what was transpiring in the Romano case and Borders' corrupt dealings. But the mere fact that these two men, who had a longstanding professional personal relationship, were in contact does not prove Judge Hastings' involvement in the conspiracy. I am particularly troubled by the fact that, as both sides would agree, the evidence does not reveal the totality of the contacts between Judge Hastings and Borders. It is thus possible that the suspiciousness of the timing of the contacts that are documented in this record is more apparent than real.

We also have a number of events and circumstances, such as the three "shows of proof" allegedly made by Judge Hastings to signal his complicity and the fact that Borders obviously had a source which gave him "inside information" about the Romano case, which can be seen as evidence of Judge Hastings' involvement in Borders' corrupt scheme. But for me, those events and circumstances are not sufficiently convincing as proof of guilt.

The "shows of proof," while arguably suspicious, are ambiguous. Judge Hastings continued the Romanos' sentencing in May 1981, as Borders had predicted, but the Romanos' lawyers asked the judge for that relief and there is little, if any, proof that the judge would have known that their lawyer would make such a motion. Judge Hastings did appear at the Fontainebleau as promised by Borders, but that appearance may only signify Borders' skill as a manipulator. Judge Hastings did issue an order returning a substantial portion of the Romanos' forfeited property, as Borders said he would do, but the content of that order was consistent with the law and the delay in its issuance can be explained by other factors. Indeed, the fact that that order was issued a week later than Borders had promised is difficult to reconcile with the picture painted by the House of Judge Hastings and Borders in steady contact to work through the details of the alleged conspiracy. And although Judge Hastings is unable to do more than conjecture as to how Borders came to know detailed information about the case, if not for him, that is not something which, presuming him innocent, he should be expected to know and explain to us.

Judge Hastings' agitated reaction when he learned of Borders' arrest on October 9 is also troubling. But although his response may not be what I would expect of myself in like circumstances, I do not see his hurried return to his home as convincing evidence that he was distraught and guilty, rather than merely distraught.

Set against the foregoing evidence, is evidence from which an inference of innocence could well be drawn. The evidence showed that Judge Hastings was living within his means and had led a life devoted less to financial gain than to community service. There was no evidence of past misdeeds and no evidence that Judge Hastings' character rendered him at all likely to embroil himself in the serious wrongdoing of which he is here accused.

In sum, too often for my satisfaction, House managers take the view that it is sufficient to prove circumstances from which guilt could be inferred, and at that point, they argue the burden shifts to Judge Hastings to establish his innocence. For example, with regard to the May 11 continuance, the House does not prove that Judge Hastings gave Borders information on his intended action. Rather it points to the testimony of the Romanos' lawyer, "Neal Sonnett, members of his firm and staff and the judge's staff" to the effect that they did not provide the information, and then argues that Judge Hastings has failed to demonstrate a reason "why those persons should not be believed." Similarly, the House managers argue that on September 11, Judge Hastings and Borders met at National Airport to discuss their bribery scheme. But there is no proof of such a meeting. The proof is that the meeting could have occurred and then the argument is made that Judge Hastings has failed to adequately demonstrate that it did not happen.

The question before the Senate on article I, and on each of the other arti-

cles as well, is not which version of events—that offered by the House or that offered by Judge Hastings—is more plausible. The question instead is whether the evidence presented by the House satisfied its burden of proof to the satisfaction of two-thirds of the Members of this body. For my part, it does not.

Having concluded that I will vote to acquit on article I, I see no basis for a conviction on any of the false statement articles. The House managers, in their post-trial memorandum, urge that a conviction could be appropriate on article VI and articles X through XV, even after a vote to acquit on article I. However, for each of those articles, I find either insufficient proof that Judge Hastings' testimony was false or, where particular aspects of his testimony were incorrect, insufficient proof that he purposefully lied from the witness stand.

Article XVI contains a charge independent of the 15 articles which precede it. Article XVI charges that in September 1985, Judge Hastings disclosed confidential information to Mayor Stephen Clark, of Dade County, FL, which the judge had learned while supervising a federally authorized wiretap. Mayor Clark so testified. The evidence, however, establishes that Judge Hastings could not have made the disclosure either at the time when, or in the manner which, Mayor Clark claims that that disclosure occurred. That gaping hole in the proof had not been remedied to my satisfaction by the other proof submitted by the House. I am also troubled by the failure of the House to identify any credible motive for the alleged disclosure. In my view, a vote to convict on article XVI would require reliance on speculation, not proof, and I shall accordingly vote to acquit Judge Hastings of this charge.

I will also vote to acquit on article XVII. Having concluded that the proof is insufficient to establish that Judge Hastings is guilty of any of the preceding articles of impeachment, each of which accuses him of a very specific act or wrongdoing, I am unwilling to vote that the whole—embodied in article XVII—somehow equals more than the sum of its parts.

The oath of each Senator in the consideration of impeachment articles is to "do impartial justice according to the Constitution and laws"—rule XXV, Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. To my mind that means each Senator must consider the evidence, weigh it in light of his own experiences, and determine whether the guilt of the respondent has been established. I conclude that in this case the evidence falls short.

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from New Mexico [Mr. BINGAMAN] for his kind remarks. I have the utmost admiration for the job which the chairman, Senator BINGAMAN, did, in the discharge of the duties of the impeachment trial.

The full committee attended to its duties with vigor, diligence and commitment. I would like to pay special thanks to the very devoted staff of the committee: Michael Davidson, Senate legal counsel, performed admirably, as did Anthony Harvey; the administrator; Elaine Stone, Counsel; Bruce McBarnette, counsel. I ask, Mr. President, there be printed in the RECORD at this point the list of all of the staff members, each of whom are due accolades for their work on this committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IMPEACHMENT TRIAL COMMITTEE

Michael Davidson, Senate Legal Counsel.
Anthony L. Harvey, Administrator.
Mark A. Klugheit, Counsel.
Bruce O. McBarnette, Counsel.
P. Casey McGannon, Staff Assistant and Exhibits Clerk.
Isabel T. McVeigh, Staff Assistant and Journal Clerk.
Angela Muenzer, Staff Assistant.
Marilyn Poku, Staff Assistant.

MEMBERS' STAFF REPRESENTATIVES

Senator Bingaman, Chairman, Patrick Von Bargen.
Senator Leahy, Cathy Russell and Mark Gerchick.
Senator Pryor, John Monahan.
Senator Bryan, John Forrest.
Senator Kerrey, William Hoppner.
Senator Lieberman, John Nakahata and Aaron Beyer.
Senator Specter, Vice Chairman, Ron Weich.
Senator Durenberger, Edward Garvey and Joshua Leby.
Senator Rudman, Jim Ferrell and Jonathan Page.
Senator Bond, Chris Leritz.
Senator Gorton, Anthony Lowe.
Senator Burns, Lori Bass.

INTERNS

Troy Oechsner, Jeffrey Rackow, Andrea Wintroub, Marc McCaskill.

PAGES

Michelle Jenner, Johnnie Kaberle.

Mr. SPECTER. I would like to express thanks to Mark Klugheit, a former partner of mine with Dechert, Price & Rhoads, who came to Washington and worked unstintingly and very effectively. He did an outstanding job.

Mr. President, when I undertook this assignment I had a preconception that the impeachment process ought to be delegated to some other body. I though, at that time, that it ought not be the responsibility of the U.S. Congress. We should not take the time of the U.S. House of Representatives to refer articles of impeachment, or should not take the time of the U.S. Senate to hear the matter and make an adjudication.

After participating in this process I have revised my thinking. Obviously the Congress is very busy. We had an enormously busy month in July, in the Senate. But we found time to discharge these duties, and yesterday the Senate went into closed session at 2 and worked until approximately 9:30. The attendance was excellent at the outset. Not unexpectedly, as the hours grew long fewer Senators were in attendance. There was excellent debate and I think the record will show the Senate acquitted itself very well.

We took on many issues of importance. We have oversight responsibilities which we really cannot discharge in depth which we ought to. But the impeachment process gave us a good opportunity to look at many branches of Government, including the 11th circuit proceedings, including the FBI and other agencies.

I will have more extensive comments on the impeachment proceedings which I will insert in the record.

Mr. President, I ask unanimous consent the full text of my statement appear in the RECORD at this point followed by an appendix which is referred to in the body of the statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR ARLEN SPECTER ON THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, OCTOBER 19, 1989

INTRODUCTION

The impeachment trial of federal Judge Alcee Hastings represents a landmark in our constitutional history. In the 202 years since the adoption of the Constitution, this is the first time that any federal official has been impeached after being tried and acquitted by a jury. In essence, the House's 1988 impeachment of Judge Hastings asks the Senate in 1989—eight years after the events in question, and six years after the jury verdict—to reconsider a jury decision on charges and evidence that, if not identical to those before the jury, certainly are substantially the same. The case thus presents the Senate with unsettled issues touching on the applicability in an impeachment trial of legal concepts such as double jeopardy, collateral estoppel and undue delay.

Moreover, these issues arise here in the *Hastings* case in the context of a factually complicated matter. The 17 Impeachment Articles encompass events that center on Judge Hastings' handling of a criminal trial in 1981; his testimony at his own criminal trial in 1983; and his actions as supervising judge over an FBI wiretap in 1985. To consider fairly all these issues, the Impeachment Trial Committee in the *Hastings* impeachment heard 18 full days of testimony between July 10 and August 3, 1989. It heard 54 live witnesses (including one, William Borders, who was jailed for his refusal to testify), and two videotaped depositions; it had its record supplemented with the testimony of 25 additional witnesses from prior proceedings, including the criminal trials of Judge Hastings and William Borders. The Committee received 365 exhibits and 155 stipulations of uncontested facts into its record. Its full printed record is over 6,000

pages. The very factual complexity of the matter makes the decision that each Senator must make about the appropriate standard of proof a critical issue.

In my view, the factual and legal complexities of the matter render it a case where a just decision can be made only after extensive study and reflection. After having served as Vice Chairman of the Impeachment Trial Committee, having had the opportunity to discuss the evidence and legal issues with my colleagues on the Committee, having reviewed the briefs and considered the arguments of the parties, and with the benefit of time for my own reflection on the issues, I have decided to announce my decision on the matter of Judge Hastings' impeachment at this time with the hope that by doing so now and in this way I may assist my Senate colleagues in the difficult task of judging this historic matter. This Statement sets forth my thinking and analysis of the evidence and issues raised by this case. Recognizing that this is a matter in which significant evidence and substantial arguments may be marshalled on both sides, I have attempted to discuss the case in its entirety, with recognition of the strengths and weaknesses of both sides.

BACKGROUND

The Constitution delegates the trial of impeached federal officials exclusively to the Senate. The impeachment of a federal judge involves an especially significant aspect of this fundamental Constitutional duty because of the importance that our Founders recognized, and our history has confirmed, of an independent federal judiciary. It is essential that federal judges be preserved in office, possessed of freedom to exercise independent judgment without fear of the momentary passions or possible partisanship of either the Executive or the Legislature. But it is equally important, because of the inevitable potential for corruption in those who hold office permanently, that there be a fair and just mechanism to remove judges from office if they become corrupt.

As I have said, this case represents a unique moment in our constitutional history because it is the only occasion when impeachment proceedings were brought against an individual who had been tried by a jury and acquitted. The implications of that fact are a matter for very serious consideration by the Senate. In terms of the public perception of this proceeding, perhaps the most frequently asked question is how can it be fair to try impeachment articles against someone who has already been acquitted by a jury? In that regard, the full Senate last March considered Judge Hastings' contention that the impeachment proceedings should not go forward because they were barred by the constitutional prohibition against double jeopardy. The matter was argued to the full Senate by both Judge Hastings personally and his counsel, and by all six Managers from the House. After deliberation in closed session, the Senate voted 92-1 to deny Judge Hastings' motion to dismiss. At that time, although I voted with the majority, I expressed the opinion that while double jeopardy should not be an absolute bar to impeachment, nonetheless as a matter of fundamental fairness Judge Hastings' prior acquittal might well be entitled to substantial consideration after the evidence had been heard.

After a fifty-year void, from 1936 to 1986, the Senate has in the last three years been required to try the impeachments of three federal judges: Judge Harry Claiborne of Nevada in 1986, and Judges Alcee Hastings and Walter Nixon in this session. Each of these cases has involved a judge subject to impeachment on the basis of matters previously considered by a criminal trial jury. I also note as a matter of interest that there is pending in California another criminal indictment directed against a federal judge, Robert Aguilar. This apparently increased demand on our obligations as senators, posed by the expansion of the federal judiciary and the modern willingness to use sophisticated investigative techniques to ferret out judicial corruption, seems to augur that considering impeachments of federal judges may become a more frequent part of our duty. That prospect has led some of my colleagues to urge consideration of a constitutional amendment to remove that obligation from this body. I myself had leaned in that direction, but my experience as a member of the Hastings Impeachment Trial Committee has convinced me that such an amendment would be an error, both because of the importance of the impeachment task itself, and because of the knowledge we acquire in hearing impeachment trials that relates to important aspects of our oversight responsibilities. My observations on this point will be set forth at more length in an Appendix to this statement.

Each of the recent impeachment cases at some level has forced us to consider the interrelationship between criminal proceedings and impeachment. In the *Claiborne* impeachment, for example, one of the impeachment articles called for Judge Claiborne's impeachment solely by virtue of the fact of his criminal conviction, without an independent judgment by the Senate of guilt or innocence. That article was rejected by the Senate on a vote of 46 guilty; 17 not guilty; 35 present and 2 not voting. (Since a conviction requires the affirmative vote of two-thirds of the senators voting, a vote of "present" is equivalent in effect to a vote of not guilty.)

Thus, in both the *Claiborne* and *Hastings* impeachments, the Senate has expressed the clear view that it will not be bound in impeachment matters by the determinations of the judicial branch. But that is not necessarily the end point of the inquiry here: the novel issue that remains is whether principles of double jeopardy, collateral estoppel, due process or fundamental fairness require that the jury's verdict acquitting Judge Hastings, even if not preclusive of impeachment, nonetheless be given weight or deference. At the same time we should also be mindful that the Judicial Council of the Eleventh Circuit conducted an extensive inquiry, resulting in a 4909-page record, and urged impeachment. Beyond that, the House of Representatives impeached Judge Hastings on 17 Articles by a vote of 413-3.

COMMITTEE PROCEEDINGS

Before turning to a discussion of the evidence and legal principles, I note that the Impeachment Trial Committee has taken its assignment on this matter with a seriousness appropriate to the gravity of the constitutional task before it. Even before the hearings commenced in early July, a number of significant issues required decision. The Committee considered and established procedures to assure evidentiary hearings that would center on important issues on genuine dispute; it guided the parties through a stipulation process and urged their reliance on testimony from prior proceedings where the issues were either marginal or not really in dispute, so that the Committee was able to focus its attention on the heart of the controversy.

After extensive consideration, the Committee also decided to grant Judge Hastings' request for pre-hearing discovery. It authorized three depositions on his behalf over which I as Vice Chairman presided, and one such examination by the House, which did not occur. Although no precedent existed for these examinations, this authorization reflected the Committee's determination that Judge Hastings—and, for that matter, the House—be given ample opportunity to develop all evidence necessary to the case. In that vein, the Committee also directed its staff to work with the Department of Justice and the FBI to assure that no documents in the files of those agencies material to the case were withheld.

My distinguished colleague, Senator Jeff Bingaman of New Mexico, chaired the proceedings with care, courtesy, and deliberateness. There were significant differences of opinions among the 12 senators at various stages, and the Chairman showed patience and consideration in hearing out all points of view before calling for Committee decisions.

The attendance at the hearings was excellent. On only one occasion, the morning of July 20th, did we have serious trouble in securing a quorum. On that occasion, Senator Leahy, a member of this committee who also chairs the Agriculture Committee, recessed an important markup so that senators who were on both the Hastings Committee and the Agriculture Committee could return to establish a quorum. All or almost all of the 12 committee members were in attendance at most sessions.

After the completion of prehearing procedures, on July 10, 1989 our Committee commenced hearing evidence. We received evidence over approximately 120 hours of hearings in the course of 18 hearing days, concluded our proceedings shortly after 10:00 p.m. on August 3. The evidentiary hearings generally ran from 9:00 a.m. to 5:30 p.m. We decided to devote these substantial blocks of time in order to avoid having the case presented in a disjointed or fragmented manner. While the proceedings were interrupted occasionally by votes in the House and Senate, that disruption was held to a minimum because the Senate leadership delayed votes on many days until 5:30 p.m. and because the House members when possible agreed to the continuation of the hearings in their absence with their counsel handling the proceedings.

SUMMARY OF THE ARTICLES

There were 17 articles of impeachment which we considered. Briefly summarized, the articles charged:

That in 1981 Judge Hastings conspired with William Borders, a Washington, D.C. attorney, to solicit a $150,000 bribe from two defendants who were being tried before Judge Hastings on racketeering charges (Article I);

That in his 1983 trial on the bribery conspiracy, Judge Hastings lied repeatedly in securing his acquittal (Articles II-XV);

That in 1985 Judge Hastings revealed secret material to a Miami politician that Judge Hastings had learned in his capacity as supervising judge over an FBI wiretap (Article XVI); and

That by virtue of all of the foregoing, Judge Hastings undermined confidence in the integrity of the judiciary. (Article XVII).

I will now discuss briefly the evidence on these articles. Inamuch as the wiretap disclosure charge, Article XVI, is the simplest and most easily decided, I will discuss it first.

EVIDENCE ON THE WIRETAP DISCLOSURE ARTICLE

Article XVI charged Judge Hastings with ruining an FBI undercover investigation by revealing to one of the subjects, Dade County Mayor Steven Clark, confidential information that Judge Hastings had learned in his capacity as supervising judge of the wiretap. The evidence on this charge was weak, and the charge itself insubstantial. Although Mayor Clark testified that it was Judge Hastings who revealed the wiretap information to him, Mayor Clark's testimony as to where and how this took place was contradicted by a host of witnesses; by photographic evidence; and by the very contents of one of the FBI wiretaps. Judge Hastings also presented evidence that, if not fully persuasive, suggested an at least equally plausible explanation of how the wiretap information might have come to Mayor Clark's attention. I had no trouble reaching the conclusion that the House had not proven its case on this article.

In that context, I note that my colleague, Senator Gorton, observed after the House had completed its presentation on Article XVI that he hoped Judge Hastings would not waste the Committee's time is even bothering to reply to this article:

"If we had greater jurisdiction, I'd have moved to dismiss at the end of the House case. . . . At this point, I can say to the respondent, the only thing they can possibly do by beating this dead horse is cause me to change my mind, which I'm sure that they do not wish to do."

Although Senator Gorton's comment may perhaps have referred as much to his view that Article X did not present a legally sufficient basis for impeachment, I believe it was the prevailing view among members of the Committee that the nature of the charge under this article and the nature of the evidence to support it would not warrant Judge Hastings' removal from office. Evidence presented to the Committee showed that when this matter arose in 1985, the Justice Department did not consider it an appropriate matter for prosecution; and in my view that correct determination leads to the similar conclusion that his article and the evidence in support of it are not an appropriate basis for impeachment.

EVIDENCE ON THE BRIBERY/CONSPIRACY AND PERJURY ARTICLES

As I have said, the central Article in the case involves charges of conspiracy to solicit a bribe and perjury. Judge Hastings was charged with agreeing with a Washington attorney, William Borders, to fix a racketeering case involving two brothers, Tom and Frank Romano, who were to be sentenced by Judge Hastings. In the House's view, soon after the *Romano* case was assigned to Judge Hastings, he in conjunction with Borders began attempting to solicit a bribe from the Romanos. As the House argued, Judge Hastings in May of 1981 continued the Romanos' sentencing solely for the purpose of demonstrating to them the necessity of paying him a bribe; in July of 1981 Judge Hastings sentenced the Romanos, who were elderly, in bad health and had no criminal history, to substantial jail terms in order to coerce them to participate in a bribe; as a further coercion, Judge Hastings throughout the summer of 1981 refused to follow binding precedents of the U.S. Court of Appeals for the Fifth Circuit that would have required him to return over $800,000 of forfeited property to the Romanos. In the House's view, only after Judge Hastings believed that the Romanos were prepared to pay a $150,000 bribe, and after the first $25,000 of that bribe was paid to Borders, did Judge Hastings finally issue the order returning the Romanos' property that the law required.

Judge Hastings denied all of this categorically, as he did in his 1983 trial. He claimed that Borders' efforts were not part of any conspiracy with him, but rather were part of a "scam" run by Borders and others to obtain payments based on a claimed but totally false ability to exercise influence over Judge Hastings. This defense was presented by Judge Hastings to the 1983 trial jury which acquitted him.

In the House's view, as alleged in Articles II-XV, that acquittal was tainted because it was based on perjured testimony and fabricated evidence. For this part, Judge Hastings urges that those same arguments that his testimony was false and his evidence fabricated were presented to, and rejected by, the 1983 trial jury.

THE HOUSE CASE AGAINST JUDGE HASTINGS

The evidence presented by the House against Judge Hastings was circumstantial in the sense that there was no "smoking gun": that is, no admission of guilt by Judge Hastings, and no witness who directly testified that he had paid money to Judge Hastings or saw or heard Judge Hastings agree to accept a bribe or participate in a scheme with Borders. The fact that the case was entirely circumstantial, however, does not necessarily mean that it was weak or insubstantial. The law has consistently recognized that circumstantial evidence—meaning evidence that involves facts from which inferences are drawn rather than direct observation of the fact at issue—may be as good or better than direct evidence; indeed it is possible to convict someone of first-degree murder based entirely on circumstantial evidence.

However, what the fact that the case against Judge Hastings is entirely circumstantial does mean is that a meticulous scrutiny of the record is required. We must be sure that the facts which comprise the circumstantial case have been established; that the inferences which the House seeks to have drawn from those facts are appropriate; that there are not other equally appropriate inferences consistent with innocence to be drawn from those same facts; and that the chain of circumstantial evidence presented is in its entirety sufficient to lead to a conclusion of guilt.

The full body of the circumstantial evidence against Judge Hastings is set forth in the report of the Impeachment Trial Committee, which all members have. I believe that the very difficult presentation of this mass of evidence was well handled by the House managers. Their case was meticulously presented at the hearings by Representatives John Bryant, Hamilton Fish, George Gekas, John Conyers and Mike Synar and neatly summarized on large charts which permitted the entire pattern of circumstantial evidence against Judge Hastings to be grasped and understood. The circumstantial evidence presented by the House raised inferences suggestive of guilt. That evidence included:

A pattern of repeated telephone contacts between Judge Hastings and William Borders, including a pay phone to pay phone telephone call on April 9, 1981, which tie in closely either to key events in the *Romano* case or to contacts between Borders and the government's informant, William Dredge;

Judge Hastings' appearance for dinner at the Fontainebleau Hotel in Miami on September 16, 1981, as Borders had predicted he would, to give proof of his participation in the bribery arrangement;

Borders' apparent possession of inside information about the *Romano* case with no conclusive source other than Judge Hastings;

Judge Hastings' hurried issuance of an order returning the Romanos' property on October 5 and 6, 1981, after Borders had received the $25,000 downpayment on the bribe on September 19, 1981;

A suspicious telephone conversation between Borders and Judge Hastings on October 5, 1981 (tape recorded by the FBI) which the House contends was a coded discussion of the status of the bribery arrangements; and

Judge Hastings abrupt departure from Washington on October 9, 1981 after learning of Borders' arrest and the FBI's desire to speak with him concerning a "bribery in his courtroom."

The recorded October 5 telephone conversation is particularly worthy of discussion. On its face it is literally a conversation about "letters for Hemp": that is, letters which Judge Hastings claims that he had prepared on October 5, 1981 in support of Hemphill Pride, a mutual friend of Judge Hastings and William Borders. The draft "Hemp letters" which Judge Hastings claimed he wrote on October 5, 1981 were introduced in evidence in both the 1983 trial and here.

More of the Committee's attention was focused on the October 5 phone call and the "letters for Hemp" than any other aspect of the case. In the House's view, that phone call could not really have been about help for Hemphill Pride, and those letters could not have been written on October 5, for a variety of reasons. The House argued that the literal text of the telephone call seems to make no sense because Judge Hastings is apparently calling Borders for information yet receives none. The claim that the telephone call was part of a program of support for Hemphill Pride is in the House's view totally disproven by Pride's testimony that he was not aware of, and did not wish any such efforts by Judge Hastings and Borders, and by the lack of any extrinsic evidence to show that Judge Hastings in 1981 had done anything to be helpful to Pride.

In addition, there was evidence directed to establishing that the draft "Hemp letters" were not prepared on October 5, as Judge Hastings claimed, but rather much later. Those letters are at least suspect since they contained not a single edit or correction despite Judge Hastings' testimony that he wrote them while sitting on the bench presiding over a jury trial. Further, there is some reason to question whether the letters were shown to anyone else by Judge Hastings before December, 1982, when they were turned over to the federal prosecutors in pretrial discovery. In the House's view, if those letters were genuine, they should have been produced to prosecutors when Judge Hastings turned over other documentary evidence in February, 1982; and the House further contends that, if they existed, Judge Hastings should have made them available as a matter of defense for Mr. Borders in his March, 1982 trial. It is a stipulated matter that Joel Hirschhorn, for a time

Judge Hastings' principal defense counsel, never saw the letters.

In all, the House urges that the evidence establishes that the October 5 phone call between Borders and Judge Hastings could not have been about help or letters for Hemphill Pride because no help was being offered and no letters had been drafted. Instead, the House urges, the October 5 phone call was a coded confirmation from Borders to Judge Hastings that the bribery arrangement was still on, that the $25,000 downpayment had been received and that the $125,000 balance was to be expected shortly. Thus, in the House's view, when Judge Hastings in that October 5 conversation told Borders that "I'll send the stuff off to Columbia in the morning," what he was really saying was that the Romano forfeiture order would go out the next day. That theory, the House urges, is dramatically confirmed by Judge Hastings' October 5 direction to his law clerk, Jeffrey Miller, to finish the Romano order "that day;" and by the fact that the order was then mailed out the next day special delivery.

SOME GAPS IN THE CIRCUMSTANTIAL EVIDENCE

The chain of circumstances and inferences that the House presented against Judge Hastings was not, however, without gaps—some of them quite significant. For example, in the House's view, the first demonstration of Judge Hastings' participation in the bribery arrangement was to be the fact that he would continue the Romano sentencing from May 11 without being asked to do so by either party. Yet the transcript of the May 11 proceeding shows that when Judge Hastings took the bench, he stated immediately that he was prepared to proceed with the sentencing and continued the matter only after being requested to do so by the Romanos' defense lawyer. Although the House urges that Judge Hastings must somehow have been advised that the defense lawyer was going to move for a continuance, there was no evidence to sustain that position.

I note also that in Judge Hastings' view, as argued by his counsel, the prediction that the sentencing would be put off actually referred to the July sentencing date rather than the May date. Judge Hastings pointed to the very limited evidence of documented phone contacts between Borders and Dredge before May, 1981 as evidence that their dealings regarding the Romano bribe could not have begun in earnest until after the May 11 sentencing date. Thus, Judge Hastings' imposition of sentence on the Romanos on July 8 without a continuance may itself be a substantial refutation of one of the elements of the circumstantial case against him.

Another gap in the circumstantial evidence has to do with the failure to trace any of the bribe payments to Judge Hastings. Twenty-five thousand dollars was paid by an undercover agent to Borders on September 19; the FBI could find no evidence that any of that money went to Judge Hastings and, indeed, conceded that an examination of his personal circumstances and lifestyle were consistent with what one would expect of an individual living on the salary of a federal judge. In this regard I note that Judge Hastings has vigorously assailed the FBI's decision to arrest Borders with the $125,000 balance of the bribe on October 9, 1981 rather than "let the money walk." Had Border been permitted to leave with the money, Judge Hastings argues, that would have been a conclusive demonstration of his innocence since none of the money would have gone to him. Judge Hastings offered testimony supporting his view that the investigation was flawed in this way from both the U.S. Attorney and the Chief of the Criminal Division for the southern District of Florida. However, there was important testimony from other witnesses with significant law enforcement experience that supported the decision to arrest Borders at the scene of the payoff, on the grounds that there would be no way to trace either the money or Borders once he left. Consequently, I do not weigh this factor heavily because of the arguable reasonableness of the FBI action.

Another question left open by the circumstantial evidence proffered by the House has to do with the timing and substance of the telephone conversations intercepted by the FBI on October 5, 1981. As I have noted, in the House's view the call between Borders and Judge Hastings at 5:12 p.m. was the occasion when Judge Hastings in a coded fashion communicated to Borders that the Romano forfeiture order would go out the next day. Yet at 4:22 that afternoon, there was also an intercepted telephone conversation between Borders and the FBI undercover agent, Paul Rico. In that conversation, some 50 minutes before the Borders/Hastings conversation, Borders told Rico that the Romano forfeiture issue had been taken care of and that the order would go out the next day. This is significant evidence supporting the view that Borders knew the status of the *Romano* order well before the conversation with Judge Hastings at 5:12 p.m., and thus that Borders had another source of inside information about the *Romano* case. If that is the case, then of course the 5:12 p.m., conversation had nothing to do with the *Romano* case or a bribe but instead was exactly as it appeared—a discussion of help for Hemphill Pride.

Probably the most significant gap in the House's circumstantial case was the timing of the Romano forfeiture remittance order. Pursuant to the arrangement between Mr. Borders and the udnercover agent, Judge Hastings was supposed to issue an order remitting a sizable portion of the forfeiture within ten days of the $25,000 payment of September 19. That is, it was to be issued by September 29. There is no question about the September 29 date, because these arrangements were made between Borders and Rico on September 19 in a conversation that Rico was tape recording for the FBI. Such an order was issued, but it was issued 17 days later on October 6. There is absolutely no evidence as to why, if Judge Hastings were acting in collusion with Mr. Borders in the scheme as represented by Borders, the order was not issued by the promised date. As to the substance of the remittance order, there was strong reason for Borders to have concluded—as did the Romanos' attorney, Neal Sonnett—that such a remittance would ultimately be ordered no matter what because existing opinions of the Court of Appeals for the Fifth Circuit virtually mandated that result.

JUDGE HASTINGS' TESTIMONY

In the context of this case—where the prosecution's circumstantial evidence raised inferences of guilt, but where those inferences were at least in part offset by gaps in the circumstantial evidence—clearly the most important witness was the Respondent, Judge Hastings. This is particularly true in the absence of testimony from William Borders. Judge Hastings testified, indeed one could almost say exhaustively, before the Committee. He testified on direct examination for a day and one-half; on cross-examination for approximately three hours; and responded to questioning from members of the Committee for more than one full day. In his testimony he avoided no issues and offered explanations for all of the circumstantial evidence of guilt directed against him.

Judge Hastings explained his presence at the Fontainebleau Hotel by stating that Mr. Borders had told him he expected to be there on that evening. Judge Hastings gave testimony, which was corroborated by others, including even Mr. Dredge, that Mr. Borders was a cryptic and mysterious individual who sometimes did not show up as expected, and whose speech often contained more confusion than clarity.

The incriminating implications of the taped conversation of October 5, 1981, were undercut to some extent by Judge Hastings' testimony that he and Mr. Borders knew each other so well, and were talking on a subject so familiar to them, that they could communicate in an unusual, clipped manner. The comments of my colleague, Senator Durenberger, bore on this issue when he noted that it was difficult for him (Senator Durenberger) to put himself in the shoes of Judge Hastings, because the differences in their backgrounds may have limited his understanding of the nuances in Judge Hastings' actions:

". . . [I]t's largely because of a conversation that you had with Senator Specter a little while ago, in which you I imagine appropriately said something to him about the fact that it wasn't really fair for him to try to judge some particular behavior of yours on the basis of the way he might behave or the world that he might have observed. And I think as I have observed the difficulty expressed here in the questions on all of these issues around this table, the difficulty that people are going to have on this committee, to say nothing of the people who are not on this committee, is going to be whether or not and how far they are going to walk in your shoes versus walking in their own when they go through this kind of material."

Judge Hastings also responded to the prosecution's evidence concerning his claimed delay in the production of the "Hemp letters." He testified that he had made them available as early as March, 1982 to John Shorter, William Borders' trial attorney, and pointed out in confirmation of that fact in Shorter's testimony before the Eleventh Circuit Investigating Committee.

Judge Hastings explained the timing of the issuance of the Romano forfeiture order by the fact that the law clerk familiar with the case, Jeffrey Miller, was due to leave his chambers at the end of October, and Judge Hastings wanted to be sure that the Romano order would be completed before Miller's tenure ended. Judge Hastings' position was supported by Miller's own testimony that in early September, 1981—and therefore before the September 19th $25,000 downpayment from the undercover agent to Borders—Judge Hastings had told Miller "not to agonize about it" and just to give the Romanos their property back. Miller was able to date this conversation with some specificity by reference to a Fifth Circuit decision handed down on August 27, 1981 which he brought to Judge Hastings' attention. In Miller's view, had he been more prompt in carrying out his own responsibilities, the timing would not have

created any cause for suspicion against Judge Hastings.

Judge Hastings also explained his precipitous departure from Washington on October 9, 1981 by noting that perhaps his experience with the FBI might not have been the same as that of persons from different backgrounds. Judge Hastings contended that he did not "flee" on October 9 but, as the FBI conceded, went to a place where the FBI would have expected him to be. He went to his girlfriend's home; when the FBI arrived, he invited them in and courteously answered all of their questions.

My own observations on Judge Hastings' testimony were that he carried himself with confidence and is obviously a highly intelligent man. Judge Hastings was impressive and personable. His able counsel, Professor Terrence Anderson, commented in his closing speech that Judge Hastings was "touched with greatness."

Those attributes notwithstanding, I was troubled by Judge Hastings' testimony. There was a disturbing quality to some of what Judge Hastings said in that he seemed more inclined to offer profuse details about matters that were not truly of interest than to respond to very specific questions on particularly relevant points. Perhaps my own "feel" for his testimony has to be qualified in recognition of the eight-year lapse between the events and the Senate hearings, and the circumstances of the relay questioning by senators. After Judge Hastings' direct testimony, he was questioned by counsel for the House of Representatives, and then by the 12 Committee members in several rounds of 10 minutes each. It may be that no witness has been subjected to such extensive examination by so many questioners in any previous impeachment proceeding. Most of the questioners were experienced lawyers with prosecutorial backgrounds. The questioning of Committee members was incisive in pressing Judge Hastings on the key points of his defense.

That questioning was thorough, perhaps even tough, but nonetheless fair. I firmly believe that the forceful questioning of Judge Hastings aided our inquiry by bringing his positions, and his explanations of the chain of circumstantial evidence against him, into sharp focus. Judge Hastings was fully capable of dealing on even terms with all the questioners; and, at the conclusion of the proceedings, said he had been equitably treated:

"Senator DURENBERGER. . . . As you sit here this morning, whether you slept well or not, what are your feelings about the general fairness of the process of the last three-and-a-half weeks, particularly as you reflect on the people on this side of the table?

"Judge HASTINGS. I feel very good about it, Senator, and it gives me an opportunity to thank you all for your attention. I think through my lawyers and myself I expressed my feelings with reference to the impeachment process, and I think we have reached another plateau that I did not think that we would reach. And I still think it's a mistake to have reached this plateau, but not as it pertains to the members of this committee. You are doing what I believe you believe is the proper thing."

* * * * *

"Senator PRYOR. . . . I think this proceeding has been extremely fair. And I hope and we hope that you feel it has been fair.

"Judge HASTINGS. I do, Senator Pryor."

* * * * *

"Judge HASTINGS. Mr. Chairman, just one thing. I thank you especially and Vice Chairman Specter and each Senator for all of your courtesy. I really do appreciate it.

"Earlier on one of the Senators asked me about the process. I have immense respect for the process, and I would—and I don't mean it facetiously—urge upon you that what we have had, regardless of outcome, is a very good impeachment inquiry."

One particular matter in Judge Hastings' testimony which troubled me was the Judge's attitude toward Mr. Borders. Throughout the proceeding, Judge Hastings displayed fiery emotion at many stages, including his denunciation of the FBI, his anger at the Chief Judge of the Eleventh Circuit and his resentment about bearing the burden of testifying on so many stale transactions. Yet at no time did he seem to display emotion or hostility against Mr. Borders who, according to Judge Hastings, betrayed his friendship, subjected him to public humiliation and robbed him of his good name. I asked Judge Hastings why, in the face of his numerous passionate denunciations of many others, he had never complained about Mr. Borders' conduct. Judge Hastings responded matter of factly:

"I resent him, Senator, and that's because no one has asked me the way that you have. Alan just asked me a minute ago about it, and I told him he stole my name. There's nothing for me to do about getting bitter with anybody. The object I have is to try to get better. But if you put the question to me directly and as you are putting it, please know that I resent it highly, what has transpired here insofar as anything that he did."

After that unemotional and bloodless reply, I asked the Judge:

"Judge Hastings, you've expressed yourself about other people. You called his mother, and I can understand his mother is not him. But even in the manner of expressing it as you just did, there isn't the passion in your voice, there isn't the strength, there isn't the outrage. I mean, after all, by your approach to this case, here's a longstanding friend, a trusted friend who has used you to secure $25,000 in cash and to have his hands on another $125,000 in cash, on the representation that he can fix you, based upon a lot of association which a lot of people knew about, a trusted friend betrayed you, subjects you to a criminal prosecution to the Investigating Committee of the Eleventh Circuit, to an impeachment proceeding—where's your real resentment about this man?"

And he replied:

"I just expressed it to you and I'm sorry Senator, If the fire in my belly is not commensurate with your attitude with reference to what it ought be [sic]. Please know this, that I've testified in two proceedings and I don't believe that anybody until you has asked me that question that way, and I just answered you as best I could. But please, sir, know that I don't like what happened to me. Having to go through this orderal has been awsome, and I consider that Bill Borders is responsible for that and I don't know what else you would have me say. I'm not the kind of person who would kill somebody, but if I were I would have that kind of attitude."

The videotape, even better than the printed record, illustrates my concern. Perhaps Judge Hastings' attitude toward Mr. Borders is explained by the saying that he responded more in sorrow than in anger.

I was also not totally satisfied by Judge Hastings' explanation on the controversial "Hemp" letters. It seemed to me that, regardless of Judge Hastings' attitude toward Borders, Judge Hastings would have seen to it that those letters were available for use in Borders' defense. The prosecutor at Borders' trial emphasized the absence of those letters in his closing argument. Had Mr. Borders been acquitted, that certainly would have been of considerable tactical advantage to Judge Hastings.

In all, I had four turns of 10 minutes each to question Judge Hastings about the bribery, conspiracy and perjury aspects of the case. In addition to my concern over his lack of apparent animus toward Mr. Borders, my questioning focused on the peculiar circumstantial timing of the contacts between Judge Hastings and Mr. Borders which was frequently coincidental with key developments in the Romano case; the troubling evidence regarding the so-called "Hemp letters," including the pristine condition of the drafts and the belatedness with which they were made available to the prosecution; and the peculiarities of the October 5 phone call, in which, although Judge Hastings apparently called Mr. Borders seeking information, it seems as though no information was passed on by Mr. Borders to Judge Hastings.

Judge Hastings responded to all my questioning. He vigorously asserted that the "Hemp letters" were drafted on the bench as he had testified, and said that he was blessed with the facility to prepare drafts without interlineations or editing; that the drafts were not produced to the prosecution in his case until December 1982 because of tactical battles over the timing of discovery; that in any event he expected the letters to be subjected to careful scientific analysis which could fix the date of their preparation; and that the language of the October 5 phone call could be explained because he and Mr. Borders knew each other well and were conversing on a subject that was quite familiar to both of them. Those explanations, if not wholly convincing, were at least credible.

THE ABSENCE OF WILLIAM BORDERS AS A WITNESS

No discussion of the evidence in this case would be complete without reference to the lack of testimony from William Borders. As is obvious, only William Borders and Judge Hastings know for an absolute certainty whether they had an agreement to solicit a bribe from the Romanos. I believe our record suffers significantly from the absence of Mr. Borders' testimony.

It became apparent early in the Committee's proceedings that neither party intended to call Mr. Borders as a witness. I was not fully satisfied with the explanations for this decision given either by Judge Hastings or the House. In essence both sides seemed unwilling to vouch for Mr. Borders' credibility or to have his testimony associated with their case. While this attitude is understandable as a matter of trial tactics, I am not sure that it is wholly appropriate for the House of Representatives, which has responsibilities not only as the prosecuting party in this impeachment, but also as a public body of the United States with an obligation to see that justice is done. The House of Representatives serves a dual function in impeachment proceedings. It first considers whether the circumstances warrant impeachment; once impeachment articles are voted, it has the responsibility for their presentation to the Senate. As such, the House may be seen as operating in

a quasi-judicial capacity in which its obligations as "prosecutor" in the Senate are coordinate with its obligations as a legislative and (in impeachment matters) adjudicative body to develop a full and complete factual record.

It is arguable whether Mr. Borders would have testified under any set of circumstances, but certainly given the relatively short time period between his appearance before the Committee and the conclusion of the impeachment inquiry, the civil contempt sanctions facing Mr. Borders for his refusal to testify here seem to be inadequate. Had the House been more aggressive in seeking Mr. Borders' testimony during the investigative phases of its own impeachment inquiry, when it clearly had a duty to develop all evidence and not just evidence that might help convict Judge Hastings—and when (even though it lacks the power of the Senate to invoke civil contempt proceedings) it had available to it the threat of criminal prosecution for contempt of Congress if Mr. Borders refused to testify—it is possible that we might now find ourselves in a position to have the benefit of Mr. Borders' testimony in resolving the question of Judge Hastings' guilt or innocence.

The issue of having the Senate Committee call Mr. Borders as its own witness was raised early in our proceedings and was rejected. The Committee continued to be divided on the subject, but finally decided on July 19 to subpoena Mr. Borders. In anticipation of the possibility of Mr. Borders' testimony, the Committee had on June 27 obtained an immunity order for his testimony. On July 24, and again on July 27, Mr. Borders appeared before the Committee and, notwithstanding the immunity grant, refused to answer any questions. On both occasions, the Committee considered and rejected Mr. Borders' objections to giving testimony; when he persisted in his refusal, the Committee directed Senate Counsel to initiate proceedings to compel Mr. Borders' testimony. A full Senate resolution was adopted unanimously on August 3. On August 17, the United States District Court for the District of Columbia (per Judge Revercomb) issued an order directing Mr. Borders to answer all questions put to him by the Committee and the parties, or else to appear in court "forthwith" and show cause why he should not be held in contempt. Mr. Borders appeared before a session of the Committee over which I presided on August 22 and persisted in his refusal to answer questions notwithstanding my advice that his refusal would subject him to sanctions for civil contempt, and could thereafter result in his prosecution for criminal contempt. Mr. Borders was in fact held in civil contempt on the afternoon of August 22 (per Judge Jackson). Citing personal reasons, he asked for and was given the Committee's agreement to defer commencement of his imprisonment until August 25. He has been continuously incarcerated since that date.

The question of how to factor the absence of Mr. Borders' testimony into the evidence in this case is a difficult one. My colleague, Senator Gorton, asked Judge Hastings whether we should not infer from Borders' refusal to testify—in Borders' words at one point to be a part of the "prosecution" of Judge Hastings—that Borders' reluctance to come forward was motivated by a desire to protect Judge Hastings. Judge Hastings of course denied this. Certainly applying generally accepted principles of law, one could hardly say that Judge Hastings in any way possessed an element of control over Mr. Borders sufficient to permit any adverse inference against Judge Hastings from Borders' failure to give testimony.

My own inclinations tend more toward the opposite point of view. As I have said, I believe the House's obligations here are quasi-judicial, and involve a public responsibility to develop a complete record. The House, I believe, had as much interest, and as much duty to secure Mr. Borders' testimony as did the Senate. The House, no less than the Senate, is fundamental in the Constitutional process of impeachment, and must perform its role in recognition of the gravity of that task. Even in a criminal trial, the law recognizes that the prosecution is not just an advocate for conviction but also for justice. It is often said that the government wins its case whenever justice is done. In that context, it perhaps may be that the lack of vigor with which the House pursued Mr. Borders' testimony during the investigative phase of its proceedings is a factor worthy of some consideration here. Certainly it is the House which has the burden of proof, and to the extent that there are gaps in the circumstantial evidence where Mr. Borders' testimony, whether believed or not, could have helped fill the voids, the consequence of those gaps should perhaps fall on the House as the party which has the burden of proof.

As other members of the Committee are aware, my view throughout these proceedings has been that Mr. Borders was an indispensable witness. I urged the Committee to call him in the face of the unwillingness of either side to do so. The matter of how to weigh the absence of his testimony is an aspect of this case on which I have given considerable reflection. In the end, I have concluded to give Mr. Borders' absence as a witness no weight in my own decision because I believe that there are plausible arguments both ways over which interpretation ought to be given to Borders' refusal to testify; but I do believe the importance of the issue makes it worthy of this rather extensive comment for whatever weight my colleagues may choose to give it in their own consideration.

COMMENTS ON THE OVERALL NATURE OF THE BRIBERY/CONSPIRACY AND PERJURY EVIDENCE

In sum, the evidence against Judge Hastings on the bribery conspiracy and perjury articles has, in my judgment, the following aspects:

No "smoking gun" or direct evidence of guilt;

A significant chain of circumstantial evidence pointing toward guilt;

A number of gaps in the chain of circumtantial evidence; and

A vigorous assertion of innocence by a Respondent subjected to lengthy cross-examination and examination by Committee members.

This case does not come to us on a clean slate. It comes to us after a jury trial six and one-half years ago where much the same allegations and much the same evidence were presented to a jury, and where a jury concluded under the reasonable doubt standard of proof applicable in those proceedings that Judge Hastings was not guilty.

THE DOUBLE JEOPARDY ISSUE

By a vote of 92-1, the Senate denied Judge Hastings' motion to dismiss the Articles of Impeachment related to the bribery charge on grounds of double jeopardy. I voted with the majority because of my view that a motion to dismiss ought to be granted at the outset of the proceeding only if there was a conclusive legal bar to going forward. I noted at that time that the Senate could guarantee fairness by reconsidering the issue at the conclusion of the proceeding.

It seemed to me inappropriate for the Senate to summarily dismiss Articles of Impeachment after the recommendations by the Judicial Council of the Eleventh Circuit and the Judicial Conference of the United States and the 413-3 vote to impeach in the House of Representatives. The underlying policy considerations behind double jeopardy could be best taken into account, in my opinion, in the context of the totality of the circumstances after having heard all the evidence. We would then be in a position to assess the genuineness of Judge Hastings' claims that the Senate trial of his impeachment on Articles I-XV (the bribery conspiracy and perjury Articles) necessarily encompassed matters embraced within the framework of his 1983 trial in a way that invoked double jeopardy protections.

We are now at such a point. The appropriate starting place for our inquiry, it seems to me, is in the historical development of the double jeopardy protection. That doctrine finds expression not in the text of the Constitution as adopted in 1787, but rather in the Fifth Amendment adopted two years later as part of the Bill of Rights.

When the Bill of Rights was considered, James Madison presented a proposed amendment to the House of Representatives on June 8, 1789 with the following text:

"No person shall be subject, *except in cases of impeachment*, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation."—1 Annals of Congress 433 (June 8, 1789) (emphasis added). A similar provision appears in the Journal of the House of Representatives of August 1789:

"No person shall be subject, *except in case of impeachment*, to more than one trial, or one punishment for the same offense; nor shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."—2 Schwartz, *The Bill of Rights: A Documentary History* (1971) at 1122-23 (emphasis added). But in the form finally enacted, the Fifth Amendment provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Thus, as a beginning point, the textual history of this constitutional provision suggests that "case(s) of impeachment" were not meant to be excluded from the amendment's prohibition against double jeopardy. This would logically account for deletion of the phrase "except in case of impeachment" as a specific exception to the bar on double prosecution.

But that textual construction of the Fifth Amendment is not necessarily conclusive. There is nothing in the *Annals of Congress* or the constitutional histories that sheds significant light on the Framers' intention in modifying the text of the Fifth Amendment to eliminate the referenced exception for cases of impeachment from the double jeopardy protection. It may be that its drafters considered the "except in case of impeachment" language as surplusage in light of the existing language of Article 1, Section 3, Clause 7, which provides:

"Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment according to Law."

That language describes at least one situation in which it is clear that double jeopardy would not prevent both impeachment and criminal prosecution. The drafters may well have contemplated that impeachment proceedings would invariably occur prior to any criminal prosecution, in which case the interrelationship between double jeopardy and impeachment would be fully established by the text of Article I, sec. 3, cl. 7 allowing criminal prosecution to follow conviction in an impeachment proceeding. This is a logical interpretation in light of the fact that much of the constitutional debate surrounding the creation of an appropriate impeachment mechanism and standard ("Treason, Bribery and other high Crimes and Misdemeanors") centered on the Executive, who it has always been assumed could not be prosecuted prior to impeachment.

That, in fact, has been our historical course. Until the 1973 indictment of Court of Appeals Judge Otto Kerner, no court had ever had occasion to consider whether a sitting federal judge was subject to criminal prosecution. This issue was then decided in *United States* v. *Isaacs*, 493 F.2d 1124, 1140–44 (7th Cir. 1974), *cert. denied* 417 U.S. 976 (1974):

"On the basis of the text of the Constitution, its background, its contemporaneous construction, and the pragmatic consequences of its provisions on impeachment, we are convinced that a federal judge is subject to indictment and trial before impeachment . . ." 493 F.2d at 1144.[1]

The precedent established in the *Isaacs* case can now be seen as having paved the way for the recent impeachment cases against Judges Claiborne, Hastings and Nixon, all of whom were subject to criminal prosecution before impeachment. To be sure, Judges Claiborne and Hastings also challenged the authority of the government to prosecute a sitting federal judge, but in both cases those challenges were rejected by the courts.[2] Accordingly, it may now be accepted as a matter of settled judicial precedent that sitting federal judges are subject to prosecution even before impeachment. But those court decisions do not establish what the relation, if any, shall be between the results of a prior criminal trial and a subsequent impeachment. The difficulties of this issue are presented most directly in a case such as this, where impeachment follows an acquittal at trial.

Thus, the *Hastings* impeachment presents a question of the application of the double jeopardy clause of the Constitution in a way likely not contemplated by the Framers, and in a situation where neither the text of the Constitution nor historical scholarship offer a clear answer. The stark issue of whether an acquittal at trial brings protection against impeachment goes to the heart of the most basic of the protections afforded by the double jeopardy clause: the right to be free from repeated prosecution on the same charge. Within this last decade, the Supreme Court has had occasion to discuss the place of double jeopardy protections in our current jurisprudence. Because of the importance of the principle involved, it is worth repeating the Court's words at some length:

"That the [Double Jeopardy] Clause is important and vital in this day is demonstrated by the host of recent cases. That its application has not proved to be facile or routine is demonstrated by acknowledged changes in direction or in emphasis . . ."

* * * * *

"[T]he following general principles emerge from the Court's double jeopardy decisions and may be regarded as essentially settled: The general design of the Double Jeopardy Clause of the Fifth Amendment is that described in *Green* v. *United States:*

"The constitutional prohibition against 'double jeopardy' was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. . . . The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty."

* * * * *

"The stated design, in terms of specific purpose, has been expressed in various ways. . . . [I]t has also been said that 'central to the objective of the prohibition against successive trials' is the barrier to 'affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.' Implicit in this is the thought that if the Government may reprosecute, it gains an advantage from what it learns at the first trial about the strengths of the defense case and the weaknesses of its own. . . ."

* * * * *

"An acquittal is accorded special weight. 'The constitutional protection against double jeopardy unequivocally prohibits a second trial following an acquittal,' for the 'public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be retried even though 'the acquittal was based upon an egregiously erroneous foundation.' If the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.' The law 'attaches particular significance to an acquittal.' This is justified on the ground that, however, mistaken the acquittal may have been, there would be an unacceptably high risk that the Government, with its superior resource, would wear down a defendant, thereby 'enhancing the possibility that even though innocent he may be found guilty.' '[W]e necessarily afforded absolute finality to the jury's *verdict* of acquittal—no matter how erroneous its decision.' "—*United States* v. *DiFranceso*, 449 U.S. 117, 127–30 (1980) (citations omitted; emphasis in original).

The Court's explication makes clear that in our society an individual's right to be free from successive prosecutions after once being acquitted of criminal charges outweighs any countervailing concern that the verdict may have been a mistake. This principle is a bedrock of our constitutional history, and indeed of the English common law.

But, as powerful as that principle may be, and as fundamental as those protections are, their application is not unlimited. Those protections extend ". . . to every indictment or information charging a party with a known and defined crime or misdemeanor, whether at the common law or by statute" *Ex Parte Lange*, 85 U.S. 163, 169 (1874); they do not, however, necessarily extend to non-criminal proceedings. Even where a non-criminal proceeding is based on the same facts as a prior Criminal case, and even if it involves the imposition of monetary penalties, double jeopardy will not act as an automatic bar. *Helvering* v. *Mitchell*, 303 U.S. 391 (1938). In denying Judge Hastings' application to stay our impeachment trial on double jeopardy grounds, the United States District Court for the District of Columbia observed that double jeopardy would not preclude a Senate trial because "impeachment is not a criminal proceeding." *Hastings* v. *United States Senate*, 716 F.Supp. 38, 41 (D.D.C. 1989). The District Court's opinion concluded, however, by noting that "[a]t trial the Senators themselves may again weigh if they see fit Judge Hastings' claim that he has been wrongly tried because of his earlier acquittal." *Id.* Thus the question of whether and how the Constitution's ban on double jeopardy shall apply to Judge Hastings' impeachment expressly remains an issue for the Senate's consideration.

Recent judicial decisions hold that the question of the applicability of double jeopardy protections to noncriminal proceedings following an acquittal turns on the issue of whether the second action is "punitive." Thus in *One Lot Emerald Cut Stones* v. *United States*, 409 232, 235 (1972), the Supreme Court upheld a civil forfeiture following a criminal acquittal and said:

". . . The forfeiture is not barred by the double jeopardy clause of the Fifth Amendment because it involved neither two criminal trials nor two criminal punishments . . ." And in *United States* v. *One Assortment of 89 Firearms*, 465 U.S. 354, 366 (1984), the Court upheld the forfeiture of the defendant's firearms notwithstanding his prior acquittal on the same issues in a criminal case; the court said that in the absence of evidence that the forfeiture sanction was "punitive," or "an additional sanction for the commission of a criminal act," neither the principle of "collateral estoppel nor the Double Jeopardy Clause affords a doctrinal basis for such a rule of preclusion." [3]

Thus, as a matter of constitutional and legal inquiry, the extent to which double jeopardy protections may apply in an impeachment proceeding following a criminal trial may depend on whether impeachment is viewed as an "additional sanction" for criminal conduct, and thus punitive, or simply remedial. That question, in turn, leads back into an analysis of the Constitution's text and history. Our research has disclosed no conclusive authority. But there are significant references in contemporane-

Footnotes at end of article.

ous debates to suggest that the Framers may well have considered impeachment punitive, and thus within the currently understood scope of the double jeopardy protection.

In the records of the Constitutional Convention, as reported in the Journal of James Madison, a number of relevant references may be noted from the debate on the question "shall the executive be removable on impeachment?"

"Col. MASON. . . . Shall the man who has practised corruption [and] by that means procured his appointment in the first instance, be suffered to escape *punishment*, by repeating his guilt?"

* * * * *

"Doc. FRANKLIN. . . . It would the best way therefore to provide in the Constitution for the regular *punishment* of the Executive where his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused."

* * * * *

"Mr. RANDOLPH. The propriety of impeachments was a favorite principle with him. Guilt wherever found ought to be *punished*. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular *punishment* be provided it will regularly be inflicted by tumults and insurrections."

* * * * *

"Mr. Govr. MORRIS. . . . The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter, he should be *punished* not as a man but as an officer and *punished only by degradation from his office.*" (Emphasis added).[4]

Additional contemporaneous suggestions that impeachment, although not necessarily criminal, was nonetheless viewed by our Framers as punitive can be found in the comments of James Madison and Elias Boudinot during the debate in the First Congress in 1789 on the establishment of executive departments and the power of removal from office.

"Mr. BOUDINOT. . . . When the committee come to consider the clause respecting the removal by impeachment, *they will find it is intended as a punishment for a crime* and not intended as the ordinary means of rearranging the departments."

* * * * *

"Mr. MADISON. . . . But if the President shall join in a collusion with this officer, and continue a bad man in office, *the case of impeachment will reach the culprit and drag him forth to punishment.*" (Emphasis added).[5]

There is, to be sure, considerable scholarship that also suggests that impeachment should not be viewed as "punitive." A number of factors support this view, perhaps most importantly the American departure from the then-existing English practice under which an impeachment tribunal could impose criminal penalties in addition to removal from office. *See*, 1 Story, *Commentaries on the Constitution*, Section 803 at 586-7 (1905). But in my view, the early references to grounds for impeachment as a "crime" and to the impeachment process as "intended as a punishment" are of special significance because they were made at a time after the text of the Constitution had already limited the penalty on impeachment to removal from office—thus suggesting that such removal may well at that time have been viewed as a "punitive" action.

Under our constitutional system impeachment in fact has both remedial and punitive aspects: remedial in the sense of removing corrupt officials from office; and punitive in the sense that removal from office takes from the officeholder a very valuable position with substantial property interests attendant to it. It subjects the convicted officeholder to public condemnation and ignominy in a way that perhaps exceeds criminal prosecution. From the perspective of the officeholder, impeachment is unquestionably punitive; from the perspective of society, it is punitive and remedial.

The significance of the punitive aspects of the impeachment process are particularly important in light of the Supreme Court's observations this past May (subsequent to our denial of Judge Hastings' motion to dismiss) on the humane and personal aspects of the Constitution's double jeopardy protections:

". . . But while recourse to statutory language, structure, and intent is appropriate in identifying the inherent nature of a proceeding, or in determining the constitutional safeguards that must accompany those proceedings as a general matter, the approach is not well suited to the context of the 'humane interests' safeguarded by the Double Jeopardy Clause's proscription of multiple punishments. . . . This constitutional protection is intrinsically personal. Its violation can be identified only by assessing the character of the actual sanctions imposed on the individual by the machinery of the state.

"In making this assessment, the labels 'criminal' and 'civil' are not of paramount importance. It is commonly understood that civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties. *Ibid.* The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law, and for the purposes of assessing whether a given sanction constitutes multiple punishment barred by the Double Jeopardy Clause, we must follow the notion where it leads . . . Simply put, a civil as well as a criminal sanction constitutes punishment when the sanction as applied in the individual case serves the goals of punishment."—*U.S.* v. *Halper*, *supra*, 109 S.Ct. at 1901-2.

In my analysis of the relationship between double jeopardy protections and the impeachment process, which relies in significant measure on decisions of the court and the opinions of judges, I do not mean to suggest that the Senate's action in impeachment cases is in any way either subject to judicial review or bound by judicial precedents, or indeed by judicial interpretations of particular constitutional provisions. But the decisions and interpretations of the courts should be highly instructive to us. In our system of government it has been the courts that through the years have been called upon to construe, define and apply the provisions of our Constitution and protections of our Bill of Rights. Their decisions reflect our values and our evolving notions of justice. The recent commentaries of the Supreme Court on the scope of the double jeopardy protection occur as the product of a process of reasoning, criticism and reflection about this concept spanning 200 years. Although we are a branch of government coequal with the judiciary, and by the Constitution vested with "sole" power to try impeachments, I believe that the words and reasoning of judges who have struggled with the meaning and application of the Constitution and its provisions ought to be given great heed because that jurisprudence embodies the values of fairness and justice that ought to be the polestar of our own determinations.

As the Supreme Court noted in *Halper*, the double jeopardy clause protects "humane interests" that are "intrinsically personal." I do not believe that those interests may be shunted aside or ignored merely on the basis of a label that impeachment is a "non-criminal" proceeding. In the context of the proceedings against Judge Hastings, where it is now apparent that the evidence and charges on Articles I-XV are coextensive with matters that either were or could have been presented to the trial jury in 1983, I am not prepared to say that we now hear this case on a clean slate, or are free to decide it as we would if it had never been considered by a jury.

I continue to believe that the Senate acted wisely last March in denying Judge Hastings' motion to dismiss the impeachment articles against him outright on the basis of double jeopardy. There are enough non-criminal and non-punitive aspects to an impeachment proceeding that a prior acquittal should not be automatically preclusive of impeachment. Indeed, if the constitutional double jeopardy bar were applied rigidly, we would be precluded from impeaching not only acquitted judges but convicted judges as well. For, as applied to criminal cases, double jeopardy principles preclude not only a second trial after acquittal but also a second trial after conviction—as might occur in an effort by a prosecutor to obtain a more substantial conviction or a longer sentence. Thus if the double jeopardy bar were applied rigidly to impeachment proceedings, we would be foreclosed from impeaching even those judges convicted and sentenced—an obviously undesirable result. We might then find ourselves forced to proceed with inappropriate haste in impeachment matters to reach a judgment before a criminal trial began and double jeopardy protections applied.

But now, having heard the evidence, I believe that the principles of fairness and finality which underlie our constitutional double jeopardy protections, and the related civil law doctrines of collateral estoppel and *res judicata*, require that we recognize that when a public official comes before us impeached on the basis of charges for which a trial jury has already acquitted him, we hear such a case in a way different than we would if the individual had been convicted, or never subject to a criminal prosecution at all. Ultimately, there are aspects of impeachment that touch on "intrinsically personal humane interests," and aspects of punishment in the sanctions flowing from impeachment, to the point that a prior acquittal may not simply be ignored. We are required to act in a way that gives appropriate consideration to such a verdict, and that recognizes that the organs of the state have already failed in one attempt to prove that individual's guilt of the charges against him.

THE DELAY BETWEEN THE EVENTS AND THE IMPEACHMENT TRIAL

Before turning to a discussion of the appropriate standard of proof, one other legal aspect of the case requires comment. The articles of impeachment were returned against Judge Hastings by the House in

August, 1988. Article I charges Judge Hastings with a bribery conspiracy ending in October 1981. Articles II—XV charge him with giving perjured testimony at a trial in February, 1983. Judge Hastings has argued, both prior to and during the Committee proceedings, that the delay between the date of the alleged offenses and the House impeachment and Senate trial should in and of itself act as a bar to his impeachment. While I do not subscribe to that view, nonetheless certain points that Judge Hastings makes in this context are important in considering what deference should be given now, eight years after the fact, to a jury verdict rendered much closer in time to the events at issue.

As a beginning point in this analysis, I note that had a criminal indictment for the first time been returned against Judge Hastings in August 1988 on either the bribery conspiracy or perjury allegations, that indictment would have been barred by the five-year federal statute of limitations. 18 U.S.C. Section 3282. While the criminal statute of limitations is certainly no bar to an impeachment proceeding, the policies behind such statutes have a great deal to do with our views of fairness in adjudicative proceedings. As the Supreme Court observed in *Burnett* v. *New York Central R. Co.*:

"Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes 'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared.' "—380 U.S. 424, 428 (1964) (citation omitted).

Indeed, in the criminal law context, it has been recognized that even for indictments returned within the statute of limitations period, lengthy and inappropriate delay in the institution of criminal proceedings could rise to the level of a violation of due process. Such delays, the Supreme Court has said, may require criminal charges to be dismissed where the delay "caused substantial prejudice to [a defendant's right] to a fair trial and . . . the delay was an intentional device to gain tactical advantage." *United States* v. *Marion*, 404 U.S. 307, 324 (1971). These principles were refined but reaffirmed six years later by the Supreme Court in *United States* v. *Lovasco*, 431 U.S. 783 (1977). Applying these principles, in *United States* v. *Barket*, 530 F.2d 189, 192 (8th Cir. 1976) the Court of Appeals for the Eighth Circuit noted that the circumstances of particular cases would require a "delicate judgment" over whether a delay in bringing criminal charges was sufficiently unjustified and sufficiently prejudicial that our basic notions of due process would preclude a criminal prosecution.

In this case, Judge Hastings argues that there has been substantial prejudice to his position from the length of the delay preceding his impeachment. Judge Hastings has pointed out that while telephone and travel records are available today for certain individuals and entities central to the case, they are missing for others; he urges that in those missing records would be proof that his contacts with Borders were not conspiratorial but routine; proof of a more corrupt relationship between Dredge and Borders that the remaining evidence established. Judge Hastings also has pointed out a number of individuals who may well have had significant relevant knowledge about the case who are either dead, missing or currently incompetent to testify: Tom and Frank Romano, "Brother" Moscato, Willie Dara, Santo Trafficante and Joseph Nesline are prime examples. In the situations of Tom Romano and Joseph Nesline, their present unavailability forced us to include in the Committee's record hearsay declarations of their out-of-court statements as testified to by other witnesses, which would possibly have been held to be improper evidence under the federal rules.

Judge Hastings' claims of actual prejudice from this missing or lost evidence have at least some demonstrated substance. In his 1983 trial he was able to contrast the physical appearance of Frank Romano with that of the undercover agent, Paul Rico, and argue to the jury—apparently persuasively—that since he (Judge Hastings) knew Frank Romano well, it was obvious that he could not have been a co-conspirator with Borders because his participation in a conspiracy would have prevented Borders from being duped by an individual who could not be mistaken for Frank Romano.

It should also be noted that the 1983 trial proceedings did not include any evidence from or about the government's informant, William Dredge, or events prior to September 1981. Thus phone and travel records relating to Dredge, as well as to the aspects of the case touching on Joseph Nesline, Santo Trafficante, and the activities of the Romano brothers and "Brother" Moscato in March and April 1981, were not part of the trial proceedings—so Judge Hastings had no occasion in 1983 to be concerned about gathering or preserving that evidence.

Of course, whether any of those records or individuals would in fact have provided evidence favorable to Judge Hastings is an open question, but in my view their absence during our 1989 hearings when they were available for the 1983 trial is another reason why we ought today to exercise extreme care in making the "delicate judgment" referred to by the Court of Appeals of whether a fair trial can now be had on these eight-year-old charges.

When voting against the preliminary motion to dismiss on grounds of double jeopardy, I stated then that the jury verdict should be considered at the conclusion of the hearings on the overall issue of fairness. After studying and reflecting on double jeopardy and delay, I believe those issues may warrant dismissal of these impeachment charges, but I think it preferable not to reach those issues since this matter can be concluded on narrower grounds without establishing an unnecessary precedent.

STANDARDS OF PROOF

In matters tried in the courts, the law generally recognizes three different levels of certainty of proof. The lowest threshold, which is that which must be met by plaintiffs in most civil cases, is proof by the preponderance of the evidence—that is, proof that the conclusion urged is more probable than the contrary conclusion. In a case tried on the preponderance of the evidence standard it is the plaintiff's burden to "tip the scales" and if at the end of the case the evidence weighs evenly for both sides, the jury is required to find against the plaintiff because he is the party with the burden of proof.

For some classes of civil case, however, where the nature and importance of the issues require a greater degree of certainty, the law recognizes a more difficult standard of proof: proof by "clear and convincing evidence." This standard has been held to require proof that a party's position is "highly probable," as opposed to simply more likely than not. The kinds of cases where this elevated standard of proof is invoked vary between jurisdictions, but usually include claims of fraud, claims to enforce non-written contracts and claims of the invalidity of properly recorded patents. This high standard of proof is also required in a libel suit brought by a public official who must show by "clear and convincing evidence" that a defamatory falsehood was published with actual malice.

Finally, for criminal cases, the law imposes an even more rigorous standard of proof, requiring that a conviction may be had only upon "proof beyond a reasonable doubt." The requirement of proof beyond a reasonable doubt is most commonly defined in federal criminal cases as "proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs." [6] The requirement of proof beyond a reasonable doubt in criminal cases has been said to be evocative of the "deeply held feeling that the combination of all-too-fallible witnesses and serious sanctions requires that the sanctions should be imposed only where guilt seems virtually certain." [7]

The question before us is whether any of these standards is appropriate in the context of this case, where the substantial allegations have already been considered and rejected by a jury under the reasonable doubt standard, and where the passage of time has at least raised a question as to whether a fairer and more complete presentation of the evidence is possible today than it was six years ago when the jury sat.

In the *Claiborne* impeachment, Judge Claiborne offered a motion to establish "beyond a reasonable doubt" as the standard of proof for that impeachment proceeding. That motion was defeated by a vote of 75 to 15. At the same time, however, the chair made clear that in rejecting reasonable doubt as a standard for the full Senate, there was no intention to suggest that reasonable doubt was not an appropriate standard to be applied by individual senators. Indeed, in *Claiborne*, a number of senators explicitly adopted a reasonable doubt standard of proof. My own view in the *Claiborne* matter was that in a case which sought impeachment based directly on charges which constituted violations of federal criminal laws which had already been presented to and accepted by a trial jury, proof beyond a reasonable doubt was an appropriate standard.

Of course, an impeachment proceeding does not fit neatly into any of the categories of "civil" or "criminal" matters for which the law has clearly delineated standards of proof. Certainly a strong argument can be made that where impeachment articles are based on charges that constitute violations of criminal law, the criminal law standard of proof ought to be applicable. The Supreme Court in *In Re Winship*, 39 U.S. 358 (1970), made clear that the Constitution required use of the reasonable doubt standard in juvenile proceedings, notwithstanding the fact that such proceedings are neither criminal nor necessarily punitive. In its opinion, the Court noted the relation of the necessity for proof beyond a reasonable doubt to the stigmatization produced by a criminal conviction and to the necessity that the "moral force" of the law "not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." 397 U.S. at 363–4. These factors seem to me to be equally at work in an impeachment proceeding. When senators are

called upon to vote on an article of impeachment, we do not say "aye" or "nay" as we do on all other occasions. Instead, we articulate our vote by saying "guilty" or "not guilty." I have no doubt that the Senate's vote of guilty in an impeachment is to the officeholder as much a stigma and condemnation as the result in any criminal case, and that consequently such a decision should only be reached based on a standard of proof that does not permit people to have doubt about whether an innocent man has been unjustly condemned or punished. We may recall that when Vice President Agnew pled guilty in 1973 to a criminal charge of tax evasion, he received no jail sentence because, in the view of the prosecutors and the sentencing judge, his resignation from office—in essence his acceptance of the consequence of an impeachment—constituted sufficient punishment.

However, I do not believe it is necessary that we adopt a rigid standard of proof for all impeachments. There is much wisdom in Mr. Justice Brandeis' pronouncement when concurring in *Ashwander* v. *Valley Authority*, 297 U.S. 288, 347 (1936), that Constitutional issues should not be decided ". . . if there is also present some other ground upon which the case may be disposed of." There is no occasion today that requires the determination of the requisite standard of proof for every Senate impeachment trial; indeed, the question of the appropriate standard of proof may well vary with the nature of the allegations or charges. We should remember that, historically, impeachment trials have sometimes dealt not so much with questions like the ones we face here of whether or not a crime was committed, but rather (as in the impeachment trial of President Andrew Johnson) with whether particular conduct constituted an impeachable offense.

In the *Hastings* impeachment proceeding, for the first time in our history the Senate is asked to render judgment on a federal official who already has been acquitted by a jury in a criminal trial. What is the impact of that factor? The Impeachment Committee specifically asked the parties to address that question in their briefs, and I believe this issue has been at the center of much of the public attention to this proceeding. A review of judicial precedents brings little direct help in answering the question because of the application of the double jeopardy principle which I have already discussed: if the subsequent proceeding is "punitive," double jeopardy invokes the prior acquittal as an automatic bar; and if the subsequent proceeding is not punitive, double jeopardy principles do not apply.

Thus, it is necessary to find some judicial analogy which will permit us to apply the principles of fairness that underlie the double jeopardy protection in a context, like impeachment, that has substantial punitive and substantial remedial aspects. Perhaps the most apt analogy in judicial proceedings will be in those situations where a jury's verdict (although not a verdict of acquittal in a criminal case, since that is invariably final) is reviewed by the trial judge, or where a trial judge's factual determinations are reviewed by an appellate court. It is sometimes said that a trial judge "cannot usurp the functions of a jury" and "can only disturb a jury verdict to prevent a miscarriage of justice." [8] What constitutes a miscarriage of justice is not clearly defined in the law, but the concept is commonly applied to mean that a jury's verdict must be sustained unless it is contrary to the "clear" or "great" or even "overwhelming" weight of the evidence.[9]

In a similar vein, the Federal Rules of Civil Procedure say that a district court's findings of fact shall not be set aside by an appellate court unless "clearly erroneous." The Supreme Court of the United States in *United States* v. *United States Gypsum Co.*, 333 U.S. 364 (1948) said this occurred when: ". . . the reviewing court on the entire evidence is left with *the definite and firm conviction that a mistake has been committed.*" 333 U.S. at 395 (emphasis added). Building on that standard, in *Anderson v. Bessemer City*, 470 U.S. 564, 573, the Supreme Court said: "This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently." 470 U.S. at 573. As the Court went on to say:

"The reviewing court oversteps the bounds of its duty . . . if it undertakes to duplicate the role of the lower court. . . . '[A]ppellate courts must constantly have in mind that their function is not to decide actual issues *de novo*'. . . . If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently."—*Id.* at 573-4 (emphasis in original; citations omitted).

The Supreme Court in *Anderson* explicitly rejected a line of court of appeals decisions by distinguished judges (including Judges Augustus Hand and Jerome Frank) that appellate courts have the right to substitute their own fact findings for those of the lower court if those determinations did "not rest on credibility determinations, but [were] based instead on physical or documentary evidence or inferences from other facts." *Id.* at 574. Even in that situation, the Supreme Court said, there must be "deference to the original finder of fact;" such deference to the original fact finder is all the more warranted, the Court said, when factual "findings are based on determinations regarding the credibility of witnesses." *Id.* at 574-5.

In this case, of course, a jury had the opportunity to see and hear the same witnesses that the Committee did. Indeed, as I have noted, the jury had the opportunity to hear from a number of witnesses who had become unavailable by the time of our proceedings. The principles of fairness and finality that underlie our double jeopardy protections urge that the jury's response to those witnesses and that evidence ought to be substantially credit by us unless some manifest error is shown. The Court's conclusion in *Anderson*, that where "the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one . . . requiring them to persuade three more judges at the appellate level is requiring too much" *id.* at 575, may aptly be invoked here to suggest that where Judge Hastings has already succeeded in the defense of his case before a jury of twelve citizens, it perhaps requires "too much" that years after that fact he undertake the same burden of persuasion before one hundred Senators.

The Senate correctly concluded that it was not "too much" to require Judge Hastings to proceed with his defense on the articles of impeachment. As I believed then, and continue to believe, the mere fact of the House's overwhelming vote for impeachment following upon the recommendations of the Judicial Council of the Eleventh Circuit and the Judicial Conference of the United States required that we hear the case. But, having heard the case, there can be no question that the jury's verdict, rendered much closer in time, and reached after a fair and vigorous trial on both sides, should be given considerable deference in our decision unless it can be shown to have been clearly erroneous, or to have constituted a miscarriage of justice. To simply say that we disagree is not enough.

To sustain a conviction on the articles presented here, the House should be required to prove its case beyond a reasonable doubt; and, for the bribery conspiracy and related perjury articles, must do so in a way that shows that the jury's verdict was clearly in error or constituted a miscarriage of justice.

An appropriate manner to weigh the evidence is with an analysis of the central arguments of the House brief on the charge of conspiracy to obtain a bribe.

EVALUATION OF EVIDENCE SUMMARIZED IN THE HOUSE BRIEF

On key Article I, the corrupt conspiracy to obtain a $150,000 bribe, the House brief argues: [10]

"1. *Pattern of Contacts*"—The House brief refers to contacts between Judge Hastings and William Borders in the same time frame as alleged dealings between William Dredge and Borders. Little, if any, reliance should be placed on Dredge's testimony. There are significant discrepancies between Dredge's testimony at this hearing and the testimony he gave on prior occasions. The existing documentary records for Dredge's phone contacts with Borders tend to confirm his prior testimony that his involvement with Borders did not begin until after his May 1981 arrest. Dredge has a serious criminal record with multiple convictions. At the time of Dredge's contacts with Borders, Dredge has the obvious motivation to extricate himself from pending federal criminal charges on drug violations.

At the time Dredge dealt with Borders, Judge Hastings and Borders had reason to have contacts on other matters, aside from Hemphill Pride or the *Romano*, case, such as the prospective invitations to President Carter and Attorney General Bell to the National Bar Association meetings or the contemporaneous lawsuit which Borders had against President Reagan.

The House brief then argues:

"2. Three Separate Times Borders Offered Proof of Judge Hastings' Involvement. Three Separate Times Judge Hastings Complied." (p. 55)

According to the House contention:

"Borders made three separate 'offers of proof' for the purpose of persuading the Romanos that he could control Judge Hastings. In each instance Judge Hastings took the promised action." (p. 55)

The House assertion is not factually correct.

The first was Borders' prediction that Judge Hastings would continue the Romano brothers' sentencing on his own initiative. The evidence is unequivocal that when Judge Hastings took the bench on May 11, he stated that he was prepared to proceed with the sentencing and continued the sentencing only after a request from defense counsel. The House seeks to rebut this key fact by stating:

"Further, Neal Sonnett (defense counsel) may have orally notified chambers of his

desire for a continuance by the close of business on May 8, 1981 . . ." (p. 58)

What Neal Sonnet "may" have done is obviously pure speculation. There is no evidence that he did so.

A second issue cited in the House brief on the three "offers of proof" refers to the promise that within 10 days of the payment on the bribe, Judge Hastings would issue an order returning to the Romanos a substantial part of the forfeited property.

That admittedly did not happen.

The $25,000 was paid to William Borders on September 19. The order was not issued until October 6. In addition, Judge Hastings' law clerk testified that the Judge had directed a return of the Romanos' forfeited property in late August or early September 1981, a date fixed with reference to the Fifth Circuit Court of Appeals opinion of August 27 mandating that result.

The third "offer of proof" in the House brief refers to the September 16 "show" at the Fontainebleau. Judge Hastings' appearance at the hotel on that date is highly suspicious. Judge Hastings testified that he expected Borders for dinner but there is no evidence of a place setting for Borders or other corroboration of such an expectation by Judge Hastings. However, other evidence demonstrated Borders to be unreliable at fulfilling commitments such as appearing at appointments like dinner; but on one contention out of three "offers of proof," there is some circumstantial evidence.

The House brief then argues:

"3. More examples of Judge Hastings' complicity: the April 9 pay phone call; the October 5 coded conversation; the October 9 flight from Washington; Hastings and Borders' Relationship." (p. 72)

The House introduced evidence of a suspicious telephone call on April 9, 1981 from a pay phone in the Miami federal courthouse to a pay phone in the District of Columbia federal courthouse charged to Judge Hastings' residence. The House contends that the call was made at a suspicious time based on the suspect testimony of William Dredge. This call was not introduced into evidence at Judge Hastings' 1983 trial. Judge Hastings did not deny making the call, did not remember it and could not recall any purpose for it eight years after the fact. Since the call was charged to his home it is likely that he made it but not conclusive. It is at least somewhat speculative that Borders was the recipient.

The House brief then places great reliance on ". . . the coded telephone conversation of October 5." p. 75. The House asserts:

"The evidence that the October 5 conversation is in code is insurmountable." (p. 81) I strongly disagree with the characterization "insurmountable" and I found the testimony of the expert witness, Dr. Roger Shuy, unpersuasive.

Aside from the contention of a coded conversation, the October 5 call, in conjunction with the so-called Hemphill letters, was suspicious, but hardly rising to the level of the House's contention. The House contends the 5:12 call on October 5 contained a coded communication from Judge Hastings to Borders that the order was going out reducing the forfeiture. But that argument is undercut by the earlier telephone call at 4:22 on the same day from Borders to Rico that the order was going out. The House brief seeks to answer that gap by stating:

"The House submits that during the afternoon or evening of Sunday, October 4, Borders finally reached Judge Hastings after leaving a message at his home." (p. 82)

That assertion is wholly speculative because there is no such evidence. Had that call been made, however, there would have been no reason for the October 5 call from Judge Hastings to Borders.

The House contention is further refuted that Borders' coded communication to Judge Hastings on October 5 was that he had gotten the $25,000 down payment from the statement "he wrote some things for me . . . and then I was supposed to go back and get some more things." Had that conversation been the source of information from Borders to Judge Hastings that the $25,000 down payment had been paid, why would Judge Hastings already have issued the instruction for the forfeiture remittance? The House theory of the case was that such information had long since been communicated to Judge Hastings to warrant the remittance order.

The perfect text of Judge Hastings' handwritten letters for Hemphill Pride is curious, perhaps even suspicious, but Judge Hastings may well be able to draft such a perfect text. Had the draft letters been the product of a thoughtfully contrived plan, a careful contriver would probably have inserted some strikeovers.

The House brief then emphasizes Judge Hastings' failure to disclose the Hemphill Pride letters as circumstantial evidence of guilt. That assertion was directly contradicted by Judge Hastings' testimony that he showed those letters to William Borders' attorney, Mr. John Shorter. The House brief then contends:

". . . the letters, if offered at all, were assumed by Borders' attorney to be fabricated." (p. 91)

No evidence was offered to that effect. It is a House assumption that the letters were "assumed" by Borders' attorney to be fabricaed. In proceedings before the Eleventh Circuit, John Shorter confirmed Judge Hastings showed him the draft letters.

The House brief then states "the third compelling indication of Judge Hastings' guilt is the circumstance surrounding his departure from Washington, D.C. on October 9, 1981." Judge Hastings' conduct on that day does show a high state of anxiety and worry, but not necessarily guilt. No matter how sophisticated and poised a lawyer or a judge—or a senator—might be, there would be an understandable sense of concern and anxiety on hearing that the FBI wanted to question that individual, a judge, when a friend had just been arrested for taking a bribe in his courtroom. Anyone would be foolish to respond to that situation by walking into an interrogation without preparation and counsel. Any lawyer worth his salt, as Justice Jackson aptly put it, would insist on reviewing the facts, analyzing the situation and preparing that person, even an experienced judge, before submitting to such questioning.

It is also understandable that a resident of another state would prefer to be in his home area instead of in Washington, D.C. A more reasoned response by Judge Hastings would have been to call the FBI agent and set a convenient date a few days later in his home area for such an interview, but who among us is totally composed and wise at all times under all circumstances? And Judge Hastings did submit to extensive questioning later that day by the FBI at the home of his friend, Ms. Patricia Williams, in Florida.

The final key House contention on the central Article I states:

"d. The Relationship of Judge Hastings and William Borders Since the Conspiracy Accusation Belies Respondent's Innocence." (p. 88)

This contention essentially relies on the inferences between Borders' illegal activities and his contemporaneous contacts with Judge Hastings. There is no question that Judge Hastings and William Borders had an appropriate personal, social and professional relationship prior to these events in 1981. There can be no guilt by association.

The evidence does not support the House assertion at page 91 of its brief about Judge Hastings' "inexplicably solicitous" attitude toward William Borders. I disagree with the House's conclusions on the basis of my examination of Judge Hastings on this issue. After reflection, it is my sense that Judge Hastings' attitude may well be explained by the expression that he acted more in sorrow than in anger.

Beyond an analysis of the House brief, I note the following as key elements of the evidence which raise at least a reasonable doubt and demonstrate that the jury's verdict was neither clearly erroneous nor a miscarriage of justice:

"Testimony from Judge Hastings' law clerk, which was uncontradicted, that Judge Hastings had directed a return of the Romanos' forfeited property in late August or early September, 1981, and thus in advance of the $25,000 payment on September 19—a fact totally at odds with the House's theory that Judge Hastings would only return the forfeited property after the bribe downpayment;

"The undisputed evidence that despite Borders' commitment on September 19 that the forfeiture remittance order would go out by September 29, that did not occur. There is no reason why Judge Hastings could not have gotten that order out within that time frame had he sought to fulfill such a commitment;

"The uncontradicted evidence that in a conversation at 4:22 p.m. on October 5, 1981, Borders told the undercover agent that the forfeiture order would go out the next day, prior to the communication with Judge Hastings in which the House alleges that he learned this fact—thus inferentially corroborating Judge Hastings' claim that he was not the source of Borders' knowledge about the case and that the 5:12 p.m. call was innocent;

"The inconsistency in the House's claimed interpretation of the October 5 Hastings/Borders conversation as a code, in that if Borders' statement to Judge Hastings at 5:12 p.m.—"See, I had, I talked to him and he, he wrote some things down for me"—is meant to be Borders' communication to Judge Hastings that he's received the $25,000 downpayment, there could be no basis for claiming that Judge Hastings' direction to his law clerk much earlier in the day to finish the Romano forfeiture order was based on the $25,000 payment from Rico to Borders on September 19, because Judge Hastings would not have known about it until he spoke with Borders at 5:12 p.m.;

"The fact that it would be most unlikely for Mr. Borders to have been deceived into believing that Paul Rico was really Frank Romano if Judge Hastings, who was quite familiar with Romano's physical appearance and personality, was truly a participant in the scheme;

"The absence of evidence that the $25,000 paid to Borders on September 19 found its way to Judge Hastings;

"The background and circumstances surrounding the informant, William Dredge

(over whose pretrial deposition I presided), including his criminal history, his ever-changing story and his demeanor, which left me unwilling to accept any part of his testimony as a basis on which to convict Judge Hastings;

"The uncontradicted evidence of Judge Hastings' excellent standing in the community; and

"The uncontradicted evidence of Judge Hastings' living a lifestyle that was not lavish, and where financial rewards were not important to him."

On the totality of this record on Article I, weighing the incriminating circumstantial inferences against the exonerating factors and giving due weight to his other unblemished lifetime record, I conclude there is insufficient evidence to convict.

Articles II–IV. For the same reasons that I think the verdict should not be guilty on Article I, I reach the same conclusion with respect to the charges that Judge Hastings lied in his 1983 trial. Virtually all the matters that are contained in Articles II–XV, as allegedly false statement by Judge Hastings, were argued by the prosecution to the trial jury as false. Obviously, the jury did not accept those arguments.

Of course, it is not inevitable that we reach the same determination on these articles, or any of them, as Article I. There is always the theoretical possibility that although Judge Hastings may not have been proven guilty of conspiracy to solicit a bribe, he might have been proven to have lied in his own defense. In my judgment, however, such a verdict would be not only wrong but unseemly. To simply prosecute an acquitted man for perjury because he testified to his own innocence violates principles of fairness which have been emphasized as the underpinnings of our constitutional ban on double jeopardy. The courts have recognized that perjury prosecutions following acquittals can be tainted by prosecutorial vindictiveness and subject to dismissal for that reason.[11] It seems to me that if we are not convinced that Judge Hastings conspired to accept a bribe, for the same reasons we ought not to be convinced of the falsity of his testimony in stating that he did not so conspire; and we also ought to accept his testimony that, to the extent he said anything incorrect in his own trial defense, those mistakes were inadvertent. For those reasons, I will vote to acquit on Articles II–XV.

Article XVI. As discussed above, the case against Judge Hastings on the wiretap disclosure article was neither convincing nor substantial. While there was direct evidence in the testimony of Mayor Clark, a number of factors made Mayor Clark a less than wholly credible witness; and a host of contradictory evidence, much of it undisputed, proved convincingly that what Mayor Clark said happened could not have occurred, certainly not in the way that he said it occurred.

Article XVII. Article XVII contains no independent allegations and has no independent evidence to support it. Inasmuch as I intend to vote against impeaching Judge Hastings on the substantive charges against him, I will vote the same way on a "catch-all" article which reiterates previous charges.

FOOTNOTES

[1] Judge Kerner resigned after conviction rather than face impeachment. In 1929 and 1941, two other federal judges had been subject to indictment, but did not question the jurisdiction of the court to prosecute them before impeachment.

[2] *Claiborne* v. *United States,* 727 F.2d 842 (9th Cir. 1983), *cert. denied* 475 U.S. 1120 (1986); *United States* v. *Hastings,* 681 F.2d 706 (5th Cir. 1982), *cert. denied* 459 U.S. 1203 (1983).

[3] *See also, United States* v. *Ward,* 448 U.S. 242, 248–9 (1980); *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 168–9 (1963); *Rex Trailer Co.* v. *United States,* 350 U.S. 148, 154 (1956). *But cf. United States* v. *Halper,* 109 S.Ct. 1892, 1901–2 (1989), suggesting that at least in the context of punishment, the Supreme Court remains prepared to apply double jeopardy protections to remedies that are on their face clearly civil if the use of those remedies "as applied in the individual case serves to goals of punishment."

[4] Koch, ed., "Notes of Debates in the Federal Convention of 1787 Reported by James Madison" (1984), at 331–35.

[5] Gales and Seaton's "History of Debates in Congress" (1834), 389, 394–5 (May 19, 1789).

[6] *See,* generally, Devitt and Blackmar, "Federal Jury Practice and Instructions," Sections 11.14 (Reasonable Doubt); 71.14 (Preponderance of the Evidence); and Sections 84.08 and 97.06 (Clear and Convincing Evidence); *See also,* McCormick, LAW OF EVIDENCE, Sections 339–41 (1972).

[7] Goldstein, "The State and the Accused: Balance of Advantage in Criminal Procedure," 69 Yale L.J. 1148, 1153 (1960).

[8] *Beckman* v. *Mayo Foundation,* 804 F.2d 435, 439 (8th Cir. 1986). *See also Newmont Mines* v. *Hanover Insurance Co.,* 784 F.2d 127, 132 (2d Cir. 1986); *Payton* v. *Abbott Labs,* 780 F.2d 147, 152 (1st Cir. 1985).

[9] *See, Fireman's Fund Ins. Co.* v. *Aalco Wrecking Co.,* 466 F.2d 179, 187 (8th Cir. 1972), *cert. denied* 410 U.S. 930 (1973), citing *Cities Service Oil Company* v. *Launey,* 403 F.2d 537, 540 (5th Cir. 1968).

[10] I found the oral argument on October 18, 1989, by Congressman John Bryant more persuasive than the House brief, and I shall supplement this analysis when the Senate deliberations occur.

[11] *U.S.* v. *Eddy,* 737 F.2d 564 (6th Cir. 1984); *U.S.* v. *McFadyen-Snider,* 590 F.2d 654 (6th Cir. 1979); *cf. United States* v. *Goodwin,* 457 U.S. 368 (1982).

APPENDIX TO FLOOR STATEMENT OF SENATOR ARLEN SPECTER: THE RELATIONSHIP BETWEEN IMPEACHMENT PROCEEDINGS AND LEGISLATIVE OVERSIGHT FUNCTIONS

After 50 years without an impeachment trial being heard in the Senate, the last three years have seen three impeachment trials: those of federal judges Harry Claiborne of Nevada, Walter Nixon of Mississippi and Alcee Hastings. Some senators, including particularly my distinguished colleague from Alabama, Senator Heflin, have expressed a view that the constitutional mechanism for removal of federal judges established by the Framers is not workable in the context of our contemporary legislative responsibilities, and have urged a constitutional amendment which would remove from the Congress the responsibility for impeachment and trial of inferior federal judges.

In the 202 years since the adoption of the Constitution, as the country has grown and our legal system become more complex, the ranks of the federal judges of the district courts and courts of appeals have expanded from 13 to 741. It may be that with so many federal judges impeachment trials will become more commonplace, placing difficult demands on the already crowded agenda of the House and Senate. For this reason, some argue, the Constitution should be amended so that the Congress would retain responsibility only for impeachment proceedings against members of the executive branch and the Supreme Court—with problems of corruption or disability of all other federal judges assigned to some other tribunal.

Before participating in Judge Hastings' impeachment hearings, I favored such a constitutional amendment. After serving as Vice-Chairman of the Impeachment Trial Committee, I now believe that the issues raised in any judicial impeachment, including judicial integrity and independence of the judiciary, are sufficiently important to require our attention notwithstanding our other workload. Speaking with respect to the Senate, I believe that through the use of Rule XI committees, and with diligent and consistent effort by the members of those committees and of the full membership, we have been able to discharge our constitutional obligations in the *Claiborne, Nixon* and *Hastings* proceedings appropriately, and without detracting from our other responsibilities.

Additionally, my experience as a member of the *Hastings* committee has convinced me of another reason that it is important that the Congress and the Senate remain a part of the impeachment process even at the level of inferior federal judges. As members of the national legislature, both Representatives and Senators have oversight responsibility of many of the organs of our government involved in the criminal justice system. In the three impeachment proceedings recently concluded, the members of the impeachment committees—and indeed the whole Senate—have had an opportunity to hear and observe in a concentrated way matters which ought to raise serious concern over how some of the agencies of the executive branch and the courts for which we have oversight responsibility have operated.

In the *Hastings* impeachment, we had occasion to hear a great deal that was disturbing regarding the functioning of the FBI, the Department of Justice, and even the Eleventh Circuit Investigating Committee operating under the strictures of our recently enacted Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C., secs. 331 *et seq.* In the *Hastings* impeachment we heard evidence, among other things, that an FBI agent who was directed to conduct a telephonic interview of Judge Hastings told Judge Hastings that he was "not under investigation" when in fact the FBI was at that very moment urging the Justice Department to target Judge Hastings for indictment; in questioning that I put to him that FBI agent justified his conduct as follows:

Q: Would there be some circumstances where you would feel justified in saying to Judge Hastings that you were not investigating him in response to his question, when in fact you were investigating him?

A: That could be a situation as well.

Q: Well, under what circumstances could that be your approach?

A: Possibly in those circumstances to see if there might be a possibility of soliciting additional information from a subject of a target, you would not want to disclose that that person [was] the subject of an investigation.

Q: Well, would you consider it proper to say to a man under investigation in response

to a direct question by him, that he was not under investigation, when in fact he was?

A: It would depend on the situation, but in certain circumstances I could see where I would not want to disclose the fact that the person is the subject. It just depends.

I for one do not believe that this is appropriate policy for the FBI or the Justice Department.

In addition, testimony in the *Hastings* case revealed what I believe a number of Committee members felt was a significant misuse of the subpoena process. On Friday, October 9, 1981, the day William Borders was arrested, a number of FBI agents arrived at Judge Hastings' chambers in Miami. They were not in possession of a search warrant, but had with them a subpoena *duces tecum* requiring the production of documents before a grand jury the following week. Armed only with that subpoena, they demanded that all the documents called for be delivered to them forthwith; they refused to let people come and go in Judge Hastings' chambers; they separated Judge Hastings' personnel from each other; they told a federal magistrate who had come to Judge Hastings' chambers that he was required to leave; and they used the occasion to look through papers on the top of Judge Hastings' desk. This conduct is particularly troublesome because, it must be remembered, the FBI and Department of Justice are themselves parties to many matters that would be before Judge Hastings. The use of a subpoena *duces tecum* as if it were a search warrant, entitling them to the free run of Judge Hastings' chambers, raises the possibility of the disclosure of the judge's thoughts and work in progress on matters in which the government is a party in a way that could severely prejudice the rights of the parties adverse to the government. We ought to find out if that kind of procedure is accepted by the Department of Justice and the FBI as appropriate and routine behavior in the course of serving a subpoena; if it is, we ought to give serious thought to whether some statutory restraint should be interposed.

In addition, the events in this case revealed that significant portions of the evidence against Judge Hastings, which were subject to grand jury secrecy, appeared in the Miami newspapers almost immediately after Borders' arrest. Despite a massive investigation by the Justice Department, no conclusion was reached as to how that could have occurred.

In the *Hastings* impeachment we also had occasion, possibly for the first time, to have a close examination of the functioning of a judicial investigating committee under the 1980 Judicial Councils Reform and Judicial Conduct and Disability Act. I believe it is safe to say that I and a number of my colleagues were distressed by what we observed. Under the statute, there is no provision giving witnesses who appear before the investigating committees the right to be represented by counsel, and each of the various Judicial Conferences are largely free to establish their own rules of procedure. 28 U.S.C. 372(c)(11).[1] While the investigating committees' procedures may be likened to those of a grand jury, with similar needs for secrecy, at least in the grand jury setting there is opportunity to have any arguably improper or overreaching conduct by the prosecutor reviewed by a supervising judge. Here, by contrast, the supervising judges are themselves the investigators, with the result that, at least based on what we observed in the *Hastings* investigation, the rights of those appearing as witnesses, and those under investigation, may not be fully protected.

For instance, when Joel Hirschhorn appeared as a witness and attempted to assert attorney/client and work product privileges for a memorandum that he had prepared in the course of defending Judge Hastings, the presiding judge, without benefit of brief or argument, simply stated that "the Committee has determined that [Mr. Hirschhorn's memorandum prepared as a checklist of things to do in defending his client] is not privileged or protected under the attorney's work product or that it has been waived."

Similarly, another attorney, Kenneth Robinson, was directed to testify concerning his conversations with an individual who had sought his representation, William Dredge, without any opportunity for Dredge to contest the summary denial of any attorney/client privilege Dredge may have had for his conversations with Robinson.

Finally, I note that the Investigating Committee's questioning of Judge Hastings' former law clerk, Jeffrey Miller—undertaken in a context where Mr. Miller had no counsel or representation of his own—had an offensive quality about it. The Investigating Committee, which had called Miller to testify before it for the third time, simply refused to accept testimony that Miller was giving that was favorable to Judge Hastings. For example, note the following "question" directed to Miller by one of the presiding judges: "Let's get down with it now. How much did the instructions have to do with it?

"You have attempted to explain not by saying, well, if you hadn't followed the instructions, the judge would have signed it anyway, if that is so, why did you change it? Why did you obey his instructions if you thought had you followed your original theory that he would have signed it anyhow?

"This takes a lot of explaining, and we haven't heard yet, Mr. Miller, and we are searching for the truth in this thing."

This questioning, it must be remembered, was directed to a young lawyer, unrepresented by counsel, in a proceeding where the displeasure of the inquiring judges at his testimony was manifest; there is a very real feel of the star-chamber in such an examination. It suggests that the judges may have moved well beyond being inquirers and have become instead inquisitors.

It may be that as a result of our observations in the *Hastings* impeachment proceeding we will now want to give consideration to whether witnesses before judicial investigating committees should be guaranteed the right to be represented by counsel, or whether we will want to take more direct control over the manner in which such investigations will be conducted. It may be that Congress should amend the Judicial Councils Act to establish rules of procedures which will guarantee fairness to witnesses, and to the subjects of investigation, and to provide a mechanism for appropriate review so that the judges conducting such an inquiry are not also themselves the arbiters of the propriety of their own conduct.

I think it is important also to take note that it is not just in the *Hastings* impeachment where the Senate has heard evidence that ought to give us concern about the operations of the criminal justice system and certain aspects of the judiciary. In the recently concluded *Nixon* impeachment hearings, it was a central point of the defense case that the principal witnesses against Judge Nixon had their testimony shaped and coerced by overaggressive prosecutors. Having not myself yet had a chance to consider the evidence in the *Nixon* case, I make no judgment as to the truth of those allegations, but I do note their disquieting similarity to some of the matters that we heard in *Hastings* and in *Claiborne*.

Indeed, in the *Claiborne* case, although we voted to convict Judge Claiborne, I believe many of us left that proceeding with a genuine sense of distress regarding what we had seen presented to us regarding the conduct of the Justice Department and the IRS. We saw disturbing demonstrations of selective targeting of subjects for prosecution, manipulation of evidence and witnesses, and other misconduct. Other than myself, 17 senators had occasion to file floor statements discussing their reaction to the events in *Claiborne*. Of those 17, 8 (or nearly half)—Senators Bingaman, Hatch, Pryor, Heflin, McConnell, Bumpers, Levin, and Gore—had occasion to observe that the prosecutorial and governmental misconduct that they observed in the *Claiborne* case ought to be the subject of further inquiry. As Senator Bingaman put it: "It is clear from the debate which has taken place here in the Senate that many members are concerned not only about the evidence of overreaching by the Government in this case, but other instances of similar overreaching."

Senator Bingaman went on to call for the Judiciary Committee to hold oversight hearings. My other distinguished colleague, Senator Pryor, similarly observed: "There is no responsible doubt in my mind about another aspect of this case, and that is the long arm of the United States government and the abuse of power that ultimately led to Judge Claiborne's conviction."

Similarly, Senator Levin commented: "I was greatly disturbed by the conduct that the government was alleged to have exhibited in this case. The evidence clearly suggests that the Government engaged in a pattern of selective prosecution, prosecutorial overreaching and perhaps intimidation of witnesses and other improprieties. I support a full investigation of those charges as they relate to Mr. Claiborne in particular and other cases as well."

Notwithstanding the views of these senators, no such hearings have as yet been held. I believe with what we have now seen in the *Hastings* and *Nixon* matters, time is past due for such hearings. We have a need to balance zealous and effective law enforcement and judicial administration with respect for the rights of citizens and their constitutional protection.

None of these matters would likely have come to our attention but for the Constitution's requirement that we undertake the obligation to try impeachment cases. I know that four weeks of full hearing days in the *Hastings* impeachment was a considerable burden for me and for my 11 colleagues on the *Hastings* committee. I am sure that the time commitments of the 12 senators on the *Claiborne* and *Nixon* committees represented an equally significant measures of effort and inconvenience for them. I know the difficulties for this entire body of the time that is spent considering and deliberating these matters on the floor.

[1] *See*, Burbank, *Procedural Rulemaking Under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980*, 131 U. of Pa. L. Rev. 283 (1982).

I know also that impeachments present additional difficulty for us in that most of us have never had the occasion to act as judges where we must call a man guilty or not guilty, and we may perhaps find that role difficult.

For all that, however, I believe that there is an overriding value in the Senate continuing to act as the body that tries the impeachment of all federal officials including federal judges. We enact laws that govern the operations of the FBI, the Justice Department and the IRS, as well as the administrative functioning of the courts. Sitting as judges in an impeachment proceeding we have occasion to see in a closeup and firsthand way how those laws and the agencies they affect operate. That experience, difficult and time-consuming as it may be, makes us wiser in the discharge of our legislative responsibilities.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Idaho is recognized.

Mr. SYMMS. I thank the Chair.

(The remarks of Mr. SYMMS pertaining to the introduction of S. 1775 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

DEATH OF LEONARD C. YASEEN

Mr. MOYNIHAN. Mr. President, I rise to report to the Senate the death of a most distinguished person of our time, Mr. Leonard C. Yaseen, who has been such a faithful and fruitful member of the Board of Trustees of the Hirshhorn Museum and Sculpture Garden. Mr. Yaseen, a businessman and sometime resident of the State of Connecticut, was also, in a most extraordinary way, a lay theologian. There are not many such at any time. His writings on Christian-Judeo relationships truly have added to our understanding. I wish to say that not many men or women have done that.

Those who worked with him in his many and varied pursuits will have a sense of our loss, but so also will any who have read his extraordinary book, "The Jesus Connection." We mourn and honor him.

Mr. President, I ask unanimous consent that an obituary of Leonard C. Yaseen that appeared in the New York Times be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 9, 1989]

L. YASEEN, REALTY EXPERT, 77, DIES

Leonard C. Yaseen, a real-estate executive who specialized in relocating factories and offices, died of a heart attack early yesterday at the Rhode Island Hospital in Providence, R.I. He was 77 years old and lived in Larchmont, N.Y.

Mr. Yaseen, the longtime head of the Fantus Company, was stricken after attending a theatrical performance.

He started his consulting business in 1934 when he perceived that the heads of many businesses needed information on which to make decisions about moving plants and offices.

Two decades later, before statistics demonstrated that New York City was losing its industrial base, Mr. Yaseen perceived a flight of manufacturing companies from the city.

In the 1970's New York City officials hired Mr. Yaseen to come up with strategies to keep jobs in the city and to attract new businesses. He advised using tax breaks and other incentives to develop industrial sites in the boroughs outside Manhattan.

Mr. Yaseen, born in Chicago Heights, Ill., was a graduate of the University of Illinois and worked for his father-in-law, Felix Fantus, a Chicago industrial realtor who supplied prospective customers gratis information on possible plant locations.

Mr. Yaseen came to New York and prospered selling such information. He became the major owner of Fantus, which he sold to Dun & Bradstreet several years ago.

Mr. Yaseen was a former national chairman of the interreligious affairs commission of the American Jewish Committee and the author of "The Jesus Connection," which deals with the sources of anti-Semitism. He and his wife. Helen, founded the Yaseen Studies in Modern Art at the Metropolitan Museum, and he was a trustee of the Hirshhorn Museum in Washington.

Besides his wife, Mr. Yaseen is survived by a son, Roger, of Manhattan; a daughter, Barbara Tiffany of Philadelphia; a brother, George, of Sarasota, Fla., and three grandchildren.

Mr. MOYNIHAN. Mr. President, I see no other Senator seeking recognition. I, accordingly, suggest the absence of a quorum.

The PRESIDING OFFICER. The distinguished Senator from New York has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. I ask unanimous consent that the time constraints be eliminated as under the present order so that the Senator from Nebraska may complete his remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

DECLARATION OF ECONOMIC INDEPENDENCE

Mr. EXON. Mr. President, an article appeared in the Journal of Commerce this week which should cause the Congress, the President, and the American people to take pause and review our Nation's economic and fiscal policies.

The article by Mototada Kikkawa, an economics professor at a leading Japanese university, advocates that Japan develop "a bargaining chip against unilateral United States (trade) moves." The professor identifies the U.S. financial markets as the source of that leverage. He writes that Japan should "adjust capital flows in response to United States measures against Japan" and advocates the enactment of legislation in Japan which would trigger a 20-percent reduction in Japan's purchase of U.S. Treasury notes upon the imposition of trade sanctions by the United States.

Mr. President, Professor Kikkawa has finally spoken to what I and many of my fiscally conservative colleagues have warned of for many years. There is a danger to U.S. debt and dependence on foreign capital. That danger is a real loss of American economic and political independence.

Over one Presidency, our Nation has nearly tripled its national debt and has gone from being the world's largest lending nation to the world's largest borrowing nation. Because U.S. savings rates are too low to finance the American budget and trade deficit, the United States has turned to foreigners to finance our spending and consumption habits. This simply must be corrected.

How long will it be before the theories of an economics professor become the policies of the Government? How long before our foreign creditors pull on America's debt chain to command obedience?

There are other warning signs regarding our Nation's increasing dependence on foreign capital. Last year when the U.S. Congress attempted to impose sanctions on Toshiba for transferring technology to the Soviet Union, Toshiba was able to unleash a corps of American company representatives dependent on Toshiba components or in economic relationships with Toshiba, to plead for easy treatment on the company that endangered the lives of Americans on American submarines. To a considerable extent, the lobbying effort resulted in softer sanctions.

As for the author of the Exon-Florio law, which gives the President the power to investigate and, if necessary, stop a foreign purchase of an American company, I am especially concerned about the unrelenting purchases of American firms by foreign interests.

Earlier this year a German firm purchased the last independent American silicon wafer producer. Fifteen years ago the United States unquestionably controlled this sector. Today, 10 of the top 10 independent silicon wafer producers are either German or Japanese. I believe that it is no coincidence that soon after the completion of this transaction, the European Community put forward a domestic content regulation for semiconductors sold in Europe.

The recent sale of Columbia Pictures to Sony Corp. has caught the attention and appropriately raised the concerns of many Americans. Although this transaction will not likely come under the purview of the Exon-Florio law, this largest ever Japanese takeover of an American company is a trans-

action which should raise several cautionary flags at a minimum.

Sony has endangered the free enterprise system throughout the world by this overreaching. Sony has engaged in an aggressive effort to consolidate its electronics hardware empire with a massive supply of software entertainment properties such as CBS Records and now Columbia Pictures. This strategy is significant given the traditional adversarial relationship between home entertainment hardware and software producers, especially on royalty issues. One wonders, how will future American copyright policy be affected by this acquisition? Sony will also now have a leg up in the race to make high definition television, better known as HDTV, commercially available.

The transaction is further evidence that investment and trade policies are unavoidably linked. America risks losing its lead in a myriad of industries, not just from foreign competition, but also from foreign acquisitions.

It is also troubling that a transaction of this nature or magnitude would not be permitted in Japan, yet America is for sale to all buyers.

In a recently published book entitled "The Japan That Can Say No," all of this was outlined and their thoughts were explained very well because this book was written by a member of the Japanese Diet, Shintaro, who, in his book, accompanied and evidently assisted by the Sony chairman, writes as follows: "No matter how much the Americans expand their military, they have come to a point where they can do nothing if Japan were one day to say 'we will no longer sell you our chips'."

He continues to suggest that if Japan would say no to the United States and sell semiconductors to the Soviet Union instead, "It would instantly change the balance of power." I suggest, Mr. President, that that is a pretty sobering statement, and it is a pretty sobering thought.

Mr. President, I am reminded, and I remind the Senate once again, that Japan controls 92 percent of the world's high-powered computer memory chips, an industry created in the United States. One American electronics manufacturer has already indicated that because of Japan's monopoly power in the computer chip industry, his suppliers are now dictating to him what products he can manufacture. Will this power someday stretch from the commercial sector to the military sector as well? We all hope not.

The Exon-Florio amendment was specifically designed with this challenge and with this concern in mind. It is, indeed, ironic and I suggest disappointing that our United States Trade Representative only recently indicated a softening of the United States position on the United States-Japan semiconductor agreement. The musings of Mr. Ishihara underlines how crucial the American semiconductor industry is to our national security.

Certainly I know that the individual occupying the Chair over the Senate at this time, the Senator from Illinois, a very valued member of our Armed Services Committee, knows full well of what this Senator speaks and the concern that we should have at a higher level in the United States of America.

Mr. President, in Japan, it is unspeakable not to push ahead in every area. Previously, it has been a silent undercover strategy. Now, Mr. President, it is being spoken out loud. The United States must take note and try to act positively accordingly. What was once only a theoretical loss of American independence is now inching closer and closer to reality.

Certainly the United States-Japan alliance is one of our most important global relationships. Japan is a valued friend and should remain so. I do not wish to just stand here and bash Japan, but what I am trying to do once again with my voice in the United States Senate is to raise the caution flag, to raise it higher than it ever was before. I hope that my statements here today will begin to do that.

As a former businessman, I understand their good business sense, and they are very good at it. I only ask that Americans take note of the facts and this new and most disturbing current trend and of opinion being spoken very clearly and very publicly in Japan today.

What is the most tragic, I suggest, is that it is America's own actions or inactions, which are ceding American political, economic and military power. There is still time to reverse the policies of reckless Federal spending, huge government, high debt, the high cost of capital, weak trade policies, and low levels of domestic savings.

In this regard, Mr. President, I would like to point out that capital formation is, indeed, a critical part of what we must do to maintain our current economic structure and keep from slipping even further behind. The significant factor I think that is not generally understood, that capital formation today in the United States of America, which is the means by which we create jobs, create factories, enhance our overall economic stability, all of those things are under pressure from a whole series of sources and not the least of which that in Japan today, the interest rates for such capital formation is half that in the United States. In other words, an American businessman wanting to go into a positive, inclusive structure today to add to our well-being and provide additional jobs is faced competitivewise internationally, and that is where the game is being played today, by having to pay twice as much interest on the cost of his borrowing as are his competitors and counterparts in Japan.

The high cost then of capital is certainly one of the problems that we have not begun to overcome; that we seek to be more competitive in international trade. As the Congress considers the President's request to increase the statutory debt ceiling to over $3 trillion, which we will be doing sometime this month, the Congress, the President, and the American people must take a soul-searching look at the Nation's economic policies over the last decade and do something to change them.

The road to preserving America's place in the world should start with serious measures to reduce the Federal budget deficit on a planned and sustained basis. Soon, one precious year of the Bush Presidency will be lost without any serious action on the deficit. I encourage the President to start the new year with an economic declaration of independence, if you will, which will put forward the following tough initiatives and probably some others:

First, an all-out effort to reduce the Federal budget deficit and the eventual reduction of the national debt through an austere policy of shared sacrifice. To freeze the budget, as I have advocated so long and for so many years, would be a good place to start.

Second, a get-tough trade policy to open foreign markets. If our trading partners refuse access to American products, equal measures should be taken to reduce their access to American markets. Now is not the time to go soft. In addition to prying open the Japanese market, Fortress Europe must be prevented and resisted in this area also.

Third, the full and careful use of the Exon-Florio law to protect the national security when foreign industries try to take over key American industries and technologies. There are some industries which are so critical that they must remain under American control.

Fourth, a plan to slow the leveraged buy-out merger mania and transactions churning which prevents long-term sound investment. American companies must adopt a long-term strategy and invest in research and development, and the tax policies of this Government must be more targeted to that end. Without stability of investment, the United States risks destroying its industrial base.

Fifth, added incentives for domestic savings and investment. The President should embrace the Democratic proposal on IRA's.

Sixth, improved marketing of Treasury notes to Americans. We must en-

courage Americans to replace foreign owners of U.S. Treasury securities.

Seventh, a reduction in American interest rates. Our industries cannot compete when interest rates are nearly twice as high as those enjoyed by our trading partners and trading competitors.

Eighth, an initiative to make the American education system, from preschool to the postgraduate level, the best in the world. The United States cannot compete with a 70-percent literacy rate when Japan and Korea, for example, have 99-percent literacy rates.

Mr. President, I challenge the President and the Congress to embrace this ambitious agenda. Americans can and will pull together to make our Nation great.

The man and the woman on the street understand better than most politicians that a nation, like a family or business, faces certain disaster in the long run if it fails to recognize that uncontrolled debt sooner or later is going to cause big problems in a whole series of areas, including the possibility that in the not-too-distant future the United States would begin that slide into a second-rate international economic power.

I say once again, Mr. President, it is a sobering thought that just in the last 10 years this Nation has gone from under a trillion dollars in its national debt to over $3 trillion. By any measuring stick, it is the worst record ever produced by any government.

If that does not bring us to the realization of the course we are on and give us the courage to do something about it, then I suggest, indeed, all might be lost.

It is about time we declare our economic independence and work together, not as Democrats and Republicans but as Americans, to reduce the debt and keep America great.

Mr. President, I ask unanimous consent that the text of the articles "Japan Needs Its Own Super 301" and "See a Dependent and Declining U.S., More Japanese Adopt a Nationalistic Spirit" be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

JAPAN NEEDS ITS OWN SUPER 301

(By Mototada Kikkawa)

Japan should have a tough retaliatory measure ready if the Bush administration invokes sanctions against its products. A Japanese Super 301 that would cut funds to the U.S. Treasury is just the ticket.

In May, U.S. Trade Representative Carla Hills named Japan a country with unfair trading practices under the 1988 U.S. Omnibus Trade and Competitiveness Act. Targeted for corrective action were satellites, supercomputers and wood products.

The law requires Japan to hold talks with the United States on ending these practices over the next 12 to 18 months. If Washington is not satisfied with the results, it may impose sanctions on Japanese companies.

The United States seems irrationally threatened by Japan's economic prowess. One American journalist has even advocated "containment" of Japan, equating this country with the Soviet Union during the height of the Cold War as a menace to the West.

Imbalances and tensions inevitably arise when one country outperforms others in the global marketplace. Japan has accumulated surpluses that might be destabilizing in nature. Yet if your trading partners deny our legitimate presence in world markets, we must reconsider our assumptions about economic rationality.

We should not add to the acrimony by overreacting to such terms as "unfair" and "sanctions." An appeal to the General Agreement on Tariffs and Trade, which the Japanese government is considering in response to Ms. Hills' action, should not be an emotional counterstrike.

Japan needs an effective bargaining chip against unilateral U.S. moves. I think we have it in the financial markets.

Institutional investors in Japan have poured hundreds of billions of dollars into the United States by purchasing U.S. Treasury notes and long-term government bonds. This flow has continued despite the dollar's sharp fall in value against the yen since autumn 1985.

Japanese capital has helped to bankroll the Reagan and Bush administrations, both beset by enormous trade and budget deficits. This money has sustained U.S. economic expansion, warding off a recession.

The continuing purchase of U.S. Treasury bonds by Japanese life insurance firms, trust banks and securities houses, especially in the face of exchange losses on the order of $35 billion due to the dollar's depreciation, is a form of financial aid to Washington. Investors also recognize that the value of dollar-denominated bonds may drop further.

But this is rarely taken into account in bilateral trade talks. The emphasis is always on goods—cars, videocassette recorders, oranges and beef. Yet financial investment is just as important.

To ensure that Washington appreciates this fact and, more importantly, to enhance Japan's bargaining power, Japan should pass an Omnibus Foreign Economic Relations Law.

The key provision would adjust capital flows in response to U.S. measures against Japan. Imposition of trade sanctions, for example, might automatically trigger a 20% slash in Japan's purchase of Treasury notes.

The law would enable Japan to use its funds as leverage in future negotiations. It needs a counterpunch, because the United States apparently is determined to be even more hard-nosed and arbitrary.

Japan lives by trade. A legal shield against Super 301 would be good insurance.

Some Japanese will reject this proposal on the grounds that it violates free market principles and will infuriate the Americans. But a Japanese trade act would be for defense only, a deterrent to give our negotiators more clout at the bargaining table.

We might never have to retaliate, but the law would be available just in case Washington launches its Super 301 missiles.

SEEING A DEPENDENT AND DECLINING U.S., MORE JAPANESE ADOPT A NATIONALISTIC SPIRIT

(By David E. Sanger)

TOKYO, July 31.—In a volume called "The Japan That Can Say No.," selling briskly in Tokyo bookstores these days, a dark-horse candidate to be the next Prime Minister argues forcefully that Japan no longer needs to act like the deferential stepchild of the United States.

When it comes to targeting American nuclear missiles, the candidate, Shintaro Ishihara, wrote, "If one doesn't use Japanese semiconductors, one cannot guarantee precision." He added, "No matter how much the Americans expand their military, they have come to the point that they could do nothing if Japan were one day to say, 'We will no longer sell you chips.'"

If Japan decided to sell its chips to the Soviet Union instead, he speculated in the book, "that would instantly change the balance of military power."

BUBBLING TO THE SURFACE

Until recently, such nationalistic themes have usually been voiced only on the far left and right of Japanese politics. But now, in the midst of Japan's biggest political upheaval in 35 years, a growing impatience with the United States is bubbling to the surface of mainstream political discussion here with increasing frequency.

Often, it seems rooted in a deepening belief that America is an ebbing power that has been slow to recognize its dependency on Japanese technology and financial resources.

"These are the opinions of a minority, but a very substantial minority that is influential," said Masashi Nishihara, a professor of international relations at the National Defense Academy. Political hopefuls, he said, sense that "in the past year Japan has become more annoyed by American demands and more nationalistic."

In fact, the right often sounds these days much like the left. The Japan Socialist Party, which doubled its strength in the upper house of Parliament in the recent elections, has appealed to farmers who believe they are paying the price for concessions to the United States on beef and citrus. Candidates on both left and right complained that Japan is far too beholden to the United States for military protection, though they differ on what can't be done.

And even in the center, where the relationship with the United States is still highly valued, there are occasional signs of unease. Constant disputes over trade and, most recently congressional charges that Japan was trying to "steal" American technology in building its new fighter jet, the FSX, left a bitter taste here. Not surprisingly, arguments that Japan no longer needs the United States now strike a more responsive chord.

What makes "The Japan That Can Say No." unusual is that its authors could scarcely hold more establishment credentials. Mr. Ishihara, a former novelist known for his blunt views, has served in Parliament for 21 years and held two Cabinet posts.

The other author, more conciliatory in tone, is perhaps Japan's best-known entrepreneur: Akio Morita, the chairman of the Sony Corporation and perhaps Japan's best-known entrepreneur. And while they differ on specifics, both men take the position reflected in the title: that Japan should stand up to American demands head-on rather

than suck in its breath and mutter "very difficult."

To some critics here books like "The Japan That Can Say No" amount to America-bashing, the mirror image of the treatment Japanese complain they receive from Capitol Hill, Detroit and Silicon Valley. They point in particular to Mr. Ishihara's arguments that resentment of Japan abroad is based chiefly on American racial prejudice.

In a chapter devoted to the issue, Mr. Ishihara argues that while the United States "bombed Germany indiscriminately, but it did not drop the A-bomb." He adds, "When I ask them, "You dropped it here because this is Japan, didn't you? they say no. But they did drop it on Japan."

Mr. Ishihara argues that Americans are proud that "whites, including Americans, have built the modern era." But he says that "pride is too strong" and ignores high culture in Japan and elsewhere in Asia since the 16th century.

"In short, I wonder if the historical pride has gone to the length to inerasable arrogance. Right now, the modern civilization built by whites is coming close to a period of practical end, and I feel that is adding to the irritation of Americans as the postwar representative of whites."

If such views seem rarely voiced in the polite Japanese-American dialogue, perhaps it is because books like this one have been published only in Japanese. Unlike "Made in Japan," Mr. Morita's best-selling autobiography about the founding of Sony, "The Japan That Can Say No" is "primarily addressed to a Japanese audience," a close aide to Mr. Morita said.

Critics say that is no surprise. "People in Japan are very careful about what they cast into English," said John Stern, who heads the Japan office of the American electronics industry and calls the book "a manifesto for the new Greater East Asian Co-Prosperity Sphere," a reference for Japan's justification for its expansionism in Asia in the 1930's.

Other critics say that while alarmist language is becoming more common in Japanese political tracts, most Japanese are still deeply grateful to the United States for rebuilding the country after World War II. And younger people seem as fascinated by America as ever—for its resources, its military strength, its diversity and particularly for its culture.

But often that fascination seems more focused on jazz, old cars, and James Dean—in short, a nostalgia for the America of the immediate postwar years. That America, in Japanese eyes, was confident and self-sufficient.

AMERICA AND PARANOIA

In contrast, some of the extremist political literature circulating now suggests that America has become paranoid about Japan.

Another book published only in Japanese is titled "Japan as the Enemy, A New Scenario for U.S. Strategy," by Kazuhisa Ogawa, a military strategist. The book argues that American anger at Japan has been increasing on a "subliminal level" and that Japan is now considered "the third ememy," after the Soviet Union and China. "The only people who do not know about this is the Japanese." Mr. Ogawa contends.

Mr. Ishihara and Mr. Morita's book, which has sold about 50,000 copies, makes no such claim. But a recurring theme in their dialogue—they wrote different chapters—is that Japan is being blamed for an America that has become fat and complacent.

"Americans do not manufacture any more," Mr. Morita argues in the book "It is not that America does not have the technology," says the Sony Chairman, who is quick to point out that his own company has benefited greatly from American inventiveness.

ON MASS PRODUCTION

The problem, he says is that America "cannot figure out how to mass produce goods by applying new technology, or how to market them." The problem, he says, lies with men like Lee Iaccoca, the chief executive of the Chrysler Corporation and a harsh critic of Japan.

"I met the head of Chrysler Japan and I asked him how are the sales of Chrysler cars going? But he clearly said he is not in Japan to sell cars, but to buy parts, and engines and finished cars." At home, Mr. Morita says workers are used "just as tools" by profit-hungry management that pays itself too much and lays off its employees at the first hint of trouble.

Mr. Morita is quick to blame Japan as well, however. He says Japanese fail to communicate in terms that Americans can understand, advance into American society "as if aliens have arrived" without sufficient effort to become part of local communities, and contribute too little to the world.

"I think Japanese should reflect upon themselves about whether they are doing what they are supposed to do as the second largest economy in the world." Later he adds: "It hurts to open the so-far closed market, or offer Japanese money to developing countries. But the world would not improve unless we share pain."

Mr. Ishihara gives no ground. He says the West perpetuates a myth that the Japanese are unimaginative mimics of other nation's inventions. But he argues that the United States could not build its new Stealth bomber without Japanese technology—in other words, Japan makes possible the nuclear umbrella that protects it.

Meanwhile, part of inventiveness, he writes, is learning how to make high-quality goods. Japan cannot buy American electronic parts, he argues, "because the ratio of failing products is outrageously high."

"If we complain," he writes, "they respond that only Japan complains, no other countries do. It is so sad I almost start to think America will never recover."

What the two men prescribe is a reordering of the world that would give Japan more influence. Mr. Morita says America should "abandon its super-power consciousness and rebuild its economy quickly." Mr. Ishihara wants a summit conference between the United States and Japan.

In such a conference, he writes, "Japan will have more of a chance to 'say no to the U.S.' "

Mr. EXON. Mr. President, I thank you for your courtesy and attention. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Nebraska suggests the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUDGET RECONCILIATION

Mr. DOLE. Mr. President, ever since last Friday the Senate has been patting itself on the back for cleaning up the reconciliation bill. Much to our surprise, the rest of the country has responded to our great deed not with cheers, but with yawns and gaffaws.

Why? Because the American people are smart enough to recognize the reconciliation bill for what it is—the biggest side show outside of the circus.

Although we claim to make deficit cuts of $13.4 billion in the bill, about $6 billion of these so-called savings are fake. The tricks we have used range from taking programs off budget to taking credit for savings the President has already achieved through administrative changes. Instead of slashing the budget as we should have, Congress went out and bought a fog machine.

POST OFFICE OFF-BUDGET

One of the worst gimmicks in the bill is the off-budget treatment of the Post Office. This simple slip of the wrist saved the Government $1.7 billion. Next year, when the Post Office is expected to actually make money, this so-called reform will increase the deficit by close to $600 million. But knowing Congress, we'll probably decide to put the Post Office back on budget, so we can spend the $600 million somewhere else.

A lot of nay-sayers in Congress are claiming that taking the Post Office off-budget was part of the budget summit agreement signed by the President last spring. Well, this travesty is not what the President agreed to.

What the President did agree to was taking the Post Office off budget in exchange for some very real reforms—making the Postal Service pick up the tab for taxpayer subsidies on such things as mailings by nonprofit groups and postal employee health benefits. Congress, as usual, took credit for the savings, but avoid the tough choices needed to make them real.

THE FINANCE AND THE AGRICULTURE COMMITTEES ARE GUILTY TOO

Although many in Congress complain about these shenanigans, most Members act as though they were out of the room when the crucial decisions were made. Well, I will be the first to tell you that two Committees on

which I serve—Agriculture and Finance—were also guilty of phony budgeting.

Budget experts have estimated that only $300 million of the Agriculture Committee's $1 billion in savings are real. The other $700 million comes from things like capping the Export Enhancement Program—a program that actually saves our country millions by expanding our foreign markets.

Another way the Agriculture Committee has found painless savings is by scoring programs against the January baseline, instead of the more realistic August baseline. In a nutshell, this is equivalent to saying this spring drought never happened. Of course, anyone who even visited a grocery store in the last year can tell the drought happened and it had very real effects on the prices and quantities of food.

Although the Finance Committee did a little better than Agriculture, we still managed to save $240 million by delaying Medicare payment a day. That way the cost of the payments could be counted for 1991 and not 1990. Juggling our Nation's checkbook like this is never going to solve our deficit problem, in fact, in the long run it will make things worse. Next year's Gramm-Rudman target will be $64 billion, and with all the cheating we've done this year, it is going to be even harder to meet this goal.

CONCLUSION

A lot of people have reached the conclusion that a sequester is better than these phony budget savings, and although I am tempted to agree, I can't. The good people of Kansas did not send me to Washington to sit back in my easy chair and watch some automatic sequester process do my job for me. If we are going to continue in conference with the House on the reconciliation bill, I hope the conferees will agree to substitute real lasting savings in place of these "now-you-see-them-now-you-don't" cuts.

ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE HASTINGS

Mr. GRASSLEY. Mr. President, Federal judges are, under our Constitution, afforded lifetime tenure during times of good behavior. This provision of article III is the cornerstone of an independent judiciary.

But in exchange, Federal judges must subscribe to the highest ethical and moral standards. Like "Caesar's wife," they must be, simply, beyond reproach, even suspicion. By their actions, judges must not undermine the integrity and impartiality of the judicial branch of Government.

At issue is, quite frankly, the public's trust and confidence in the officials who constitute our judicial branch. Inasmuch as the public cannot remove a Federal judge from office, it is left to the legislature to protect the public trust and confidence in the judiciary. Thankfully, the House and Senate have only rarely been asked to take the ultimate step of removal from office by impeachment.

That this great power is rarely employed does not, however, mean we should retreat from it when appropriate.

By his actions in 1981 and at his subsequent trial, Judge Hastings has gravely damaged the public's trust and confidence. At one time or another, every branch of our Federal Government has called into question the conduct and integrity of Judge Hastings: the executive, when the Justice Department brought the indictment in 1981; the judiciary, by the 11th circuit council recommendation to impeach in 1986; and the legislature, by the House vote of 413 to 3 last year to impeach for various high crimes and misdemeanors, and malfeasance in office. This is unprecedented.

To absolve Judge Hastings of these charges—any one of which, if true, being enough to remove him from office—we are asked to resolve virtually every damaging, though ambiguous, fact situation in his favor.

This I cannot do.

Is the evidence presented by the House unambiguous? Admittedly not. Are there vexing questions still remaining—perhaps answerable only by those who cannot or will not speak? Assuredly yes. Can one, or even a handful, of these events be explained as an innocent coincidence? Yes, again.

But these facts, marshalled by the House—circumstantial as they are—when taken together, overwhelm any standard of proof appropriate for an impeachment. They point toward a corrupt conspiracy for Judge Hastings to trade his high office for personal gain, to fabricate documents to prove his innocence, and to repeatedly lie under oath in order to secure his acquittal at a criminal trial.

An acquittal fraudulently obtained is entitled to no weight in this proceeding. To suggest otherwise is to mock our judicial system. Indeed, this fraud is yet another independent ground on which to remove Judge Hastings from office.

The Senate is a body in which lawyers predominate. And in a proceeding such as this, issues such as the standard of proof, or how to weigh the prior acquittal are most comfortably addressed by my lawyer-colleagues.

Yet there is a danger that proceedings like these can become "overlawyered." Human instinct and common sense ought not to be on holiday here.

In that light, two particular facts—each undisputed—are especially telling for me.

The first is Judge Hastings' inexplicably moderate attitude toward William Borders—a man who for 8 years has been his tormentor. We know Judge Hastings is capable of outrage toward his accusers because, at various times, he has attacked their integrity, motives and credibility. Yet for Mr. Borders, the central accuser in this proceeding, Judge Hastings has only sorrow, not anger. Judge Hastings has never called Mr. Borders to testify on his behalf, even though Mr. Borders holds the key to ending the judge's ordeal. This is, I suggest, implausible; as was, I submit, Judge Hastings' explanation for it before the Impeachment Trial Committee.

Second, we are asked by Judge Hastings to believe that Mr. Borders was conducting a unilateral scam of notorious and dangerous underworld figures, such as Santo Trafficante, without any assistance from the judge. This is, I submit, incredible. Candidly, for Mr. Borders to so unilaterally act could only be explained by his having a death wish.

Accordingly, based on the overwhelming record, I will vote "guilty" on articles I, II, through XV and article XVII.[1]

ARMENIAN GENOCIDE

Mr. PELL. Mr. President, last month, I joined in cosponsoring Senate Joint Resolution 212, which designates April 24, 1990, as a national day of remembrance of the 75th anniversary of the Armenian Genocide. At the beginning of World War I, some 2.5 million Armenians lived in the Ottoman Empire. By 1923, 60 percent of this population—an estimated 1.5 million Armenians—died as a result of policies pursued by the Ottoman rulers. Regarding the Armenian culture as alien and the Armenian demand for tolerance and freedom as unacceptable, the empire embarked upon a deliberate campaign to eliminate the Armenian people through deportation and death.

Mr. HELMS. Mr. President, I share the concern of my friend the distinguished chairman of the Foreign Relations Committee about the massacre of some 1 to 2 million Armenians between 1915 and 1923. As ranking member of the Committee on Foreign Relations, I feel that this historical act of genocide, or any past act of genocide for that matter, should not be forgotten in this modern world in which we live.

Senate Joint Resolution 212, which will shortly be before the Senate, is not intended to criticize the current Government of Turkey. The resolu-

[1] On Article XVI, the alleged disclosure of confidential information charge, I will vote "not guilty". On this article, I find the evidence insufficient and a motive totally lacking.

tion simply seeks to commemorate tragic events which occurred long ago and before the establishment of the modern Republic of Turkey. There has been some misunderstanding on this point and it should be clear to all that Senate Joint Resolution 212 relates to these historical matters and is not intended to interfere with our current relationship with Turkey, which plays an important role in NATO.

I commend the distinguished minority leader [Mr. DOLE] for offering Senate Joint Resolution 212 concerning the Armenian genocide. I am a cosponsor of this resolution. I am somewhat surprised that there has been an effort made to mislead Senators about the history of this murder of over a million innocent men, women, and children.

Mr. PELL. Mr. President, some people have suggested that the events which we have been discussing do not constitute genocide. However, the preponderance of historical evidence suggests otherwise. State Department files and orders issued by the Ottoman government, as well as the observations and records of prominent American and European observers, leave little doubt that the Ottoman rulers launched a coordinated drive to round up and eliminate Armenian men, women, and children. In fact, in July 1915, Henry Morgenthau, our Ambassador to the Ottoman Empire, stated the following in a telegram to the Secretary of State:

Deportation of and excesses against peaceful Armenians is increasing and from harrowing reports of eye witnesses it appears that a campaign of race extermination is in progress under a pretext of reprisal against rebellion.

Mr. HELMS. Mr. President, I agree with my friend from Rhode Island that the historical record shows that the massacre of the Armenians during the World War I ere is a matter of historical fact. I am told that there are tens of thousands of pages of information about this, including photographs, in our National Archives. This matter was addressed on numerous occasions in the Senate as well as in the older body some seven decades ago.

For example, Congressman Hallett Sydney Ward of the First District of North Carolina spoke eloquently to his colleagues about the Armenian question and the massacres back on June 15, 1922. In his speech, which appears in the RECORD, he drew attention to the facts presented in two Senate Documents: Senate Document No. 266, 66th Congress, 2d Session, entitled, "Conditions in the Near East, Report of the American Military Mission to Armenia," and Senate Document No. 281, 66th Congress, 2d Session, entitled, "Mandatory Over Armenia, Report Made to Maj. Gen. James G. Harbord, United States Army, Chief of the American Military Mission, on the Military Problem of a Mandatory over Armenia by Brig. Gen. George Van Horn Moseley."

Congressman Ward also pointed to the message from President Woodrow Wilson which was laid before the Senate and which appears in the RECORD of May 24, 1920. President Wilson was responding positively to an official communication by the Senate in the form of a resolution concerning Armenia. The first paragraph of this communication stated, and I quote,

Whereas the testimony adduced at the hearings conducted by the subcommittee of the Senate Committee on Foreign Relations have clearly established the truth of the reported massacres and other atrocities from which the Armenian people have suffered * * *

The hearings of the Foreign Relations Committee concerning the massacres of Armenians were held on September 27, September 30, October 2, and October 10, 1919, to consider Senate Joint Resolution 106, "For the Maintenance of Peace in Armenia." The hearings were presented on April 13, 1920 and ordered to be printed.

The first paragraph of Senate Joint Resolution 106 begins, and I quote,

Whereas the withdrawal of the British troops from the Caucusus and Armenia will leave the Armenian people helpless against the attacks of the Kurds and the Turks * * *

Mr. President, the chairman of the Committee on Foreign Relations at that time was Senator Henry Cabot Lodge of Massachusetts. The chairman of the subcommittee on Senate Joint Resolution 106 was Senator Warren G. Harding of Ohio. Frankly, I am confident that President Wilson, Senator Lodge, and Senator Harding were well informed on this matter.

The Committee on Foreign Relations, as well as individual Senators, made a considerable effort to investigate the matter of the massacre of Armenians by Kurdish and Turkish forces and concluded that such massacres did indeed occur.

Mr. President, there is a wealth of information on this matter in this committee print which runs to 125 pages. In fact, Assistant Secretary of State William Phillips' testimony specifically notes massacres of Armenians by the Turks. I would encourage Senators to review the proceedings of these hearings to better understand the tragedy which befell the Armenian nation.

In addition to these hearings, we have eloquent and detailed statements of Senator King of Utah and Senator Ashurst of Arizona. For example, on August 1, 1919, in remarks which appear in the RECORD, Senator King spoke on "Affairs in Armenia" stating that, and I quote:

We have been compelled, however, to admit the fact that the Turkish government deliberately sought the extermination of the Armenian race.

Mr. President, the reference of Senator King here is not to the present Turkish Government but to the rulers of Turkey under the Ottomans before the establishment of the present Republic of Turkey.

Senator King again spoke in great detail on this matter on December 21, 1921, in a statement entitled, "Turkish Atrocities In Asia Minor," and I commend his remarks which appear in the RECORD to the attention of our colleagues today.

Senator Ashurst spoke in support of two Senate resolutions concerning Armenia in a statement entitled, "Condition of the Armenian People" which appears in the RECORD on June, 3, 1922. In his statement, the distinguished Senator from Arizona reminded colleagues that the Armenian nation was, and I quote:

* * * evangelized in the year 33 A.D. by Apostles fresh from the company and memory of our Lord * * *

Mr. President, the point that I am making is simply that the massacres of over a million Armenians was a matter before the Senate some seven decades ago. At that time, there was no question about the situation and the essential facts were well known.

As I remember, and perhaps my friend from Rhode Island might comment, about 5 years ago the Committee on Foreign Relations reported out a resolution concerning the genocide of the Armenian nation.

Mr. PELL. Mr. President, the Senator is correct. The Foreign Relations Committee favorably reported Senate Resolution 241 in September 1984. That resolution also referred to the ample documentation of the Armenian genocide not only in our own archives but also in those of Austria, France, Germany, and Great Britain.

Mr. President, I ask unanimous consent that the text of Senate Resolution 241 be printed in the RECORD at this point.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S. RES. 241

Whereas the Armenian genocide was conceived by the Turkish Ottoman Government and implemented from 1915 to 1923, resulting in the exterimination of one and one-half million Armenian men, women, and children, the deportation of an additional five hundred thousand survivors, and the elimination of a two-thousand-five-hundred-year Armenian presence in its historic homeland;

Whereas the Armenian genocide is amply documented in the Archives of the United States, as well as of Austria, France, Germany, and Great Britain;

Whereas United States Ambassador to Turkey Henry Morgenthau organized and led protests by all nations, among them Turkey's allies, over Turkey's program of race exterimination;

Whereas an organization known as Near East Relief, chartered by an Act of Con-

gress, contributed some $13,000,000 from 1915 to 1930 to aid the Armenian genocide survivors and, whereas, one hundred and thirty-two thousand orphans became foster children of the American people;

Whereas the fact of the Armenian genocide was confirmed in Senate Resolution 359, dated May 13, 1920, which stated in part, "the testimony adduced at the hearings conducted by the subcommittee of the Senate Committee on Foreign Relations have clearly established the truth of the reported massacres and other atrocities from which the Armenian people have suffered";

Whereas the fact of the Armenian genocide was also confirmed in House Resolution 148 which stated in part, "that April 24, 1975, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remerbrance for all victims of genocide, especially those of Armenian ancestry who succumbed to the genocide perpetrated in 1915, and in whose memory this date is commemorated by all Americans and their friends throughout the world";

Whereas former President Jimmy Carter in a May 16, 1978, speech at the White House stated in part, "I feel very deeply that I, as President, ought to make sure that this (Armenian genocide) is never forgotten";

Whereas the United States, during the March 14 and 16, 1979, sessions of the United Nations Commission on Human Rights, voted in support of paragraph 30 in a report entitled, "Study of the Questions of the Prevention and Punishment of the Crime of Genocide" which stated, "Passing to the modern era, one may note the existence of relatively full documentation dealing with the massacres of Armenians.";

Whereas the United States Holocaust Memorial Council, an independent Federal agency, unanimously resolved on April 30, 1981, that, "the Armenian genocide should be included in the Holocaust Museum Memorial";

Whereas President Reagan in Proclamation numbered 4838, dated April 22, 1981, stated in part, "like the genocide of the Armenians before it, and the genocide of the Cambodians which followed it—and like too many other persecutions of too many other peoples—the lessons of the holocaust must never be forgotten"; and

Whereas the fact of the Armenian genocide has been documented, affirmed, and reaffirmed for over six decades; and

Whereas it has been the policy of the United States to acknowledge these historical events: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President and the Secretary of State should, in formulating and carrying out the foreign policy of the United States, recognize and take into account the genocide of the Armenian people.

SEC. 2. It is further the sense of the Senate that the President should direct his representatives, including the Permanent Representative of the United States to the United Nations, to communicate at all appropriate times in international forums the abhorrence of the United States Government to the genocide of the Armenian people.

SEC. 3. The Secretary of the Senate shall transmit a copy of this resolution to the President and the Secretary of State.

Mr. PELL. Mr. President, I think it is important to make the point that the atrocities we are discussing occurred from 1915 to 1923, prior to the establishment of the Republic of Turkey. Many years ago, Kemal Attaturk condemned the massacres of millions by his Ottoman predecesors. In so doing, he acknowledged the tragic events which we have been discussing. I believe that the present Government of Turkey should do no less.

Mr. HELMS. Mr. President, I agree with the distinguished chairman of the Foreign Relations Committee. There is no intention here to blame these massacres on the Republic of Turkey which was established at a later date. There is no intention here to give any encouragement to terrorist groups or anything of that sort. We are simply trying to commemorate this tragic massacre of innocent people.

The fact is that the majority of the masacres of innocent Armenians occurred at the hands of the so-called Young Turks regime led by Enver Pasha. This was well before the establishment of the modern Republic of Turkey.

It was no secret at the time that the Enver Pasha regime had the full backing of the German war machine which itself had encouraged the fanatic pan-Islamic movement as a means to undermine British, French, and Russian interests in the Middle East. German geopolitical doctrine called for the expansion of Imperial German influence from the Baltic Sea to the Persian Gulf. The so-called Berlin to Baghdad railway scheme was part of this strategic plan. The Armenian nation was in the way of the German war machine and its Turish puppet regime so it was targeted for destruction in order to advance German war objectives.

Mr. PELL. Mr. President, I agree that by commemorating the Armenian genocide, we are not condoning violent acts of vengeance against Turkish nationals but rather reaffirming our commitment to human life and dignity by keeping the memory of the Armenian genocide alive.

FBI MUST LEAVE STINGER IN VICTIM

Mr. SANFORD. Mr. President, today, the Senate voted to impeach Judge Alcee L. Hastings. Impeachment requires a two-thirds vote of the Senate and the vote was a close one. I voted "not guilty." The following explains my vote:

An impeachment proceeding puts a Senator in the position of a juror and one has to determine whether the Government has carried its burden of proof. Jurors differ. Senators differ. Voting "not guilty" were the chairman and vice chairman of the Senate Impeachment Trial Committee, Senators BINGAMAN and SPECTER. That committee held 18 days of hearings and split 6 to 6 on guilt. Senator HOWELL HEFLIN of Alabama, whose integrity I greatly admire, former chief justice of the Alabama Supreme Court, voted "not guilty." It was not an idealogical vote; Senator ARMSTRONG, a staunch conservative Republican, voted "not guilty," and Senator KENNEDY voted "guilty." Each had to vote his or her own conscience.

My final determination was based on the burden of proof. The FBI failed to prove its case. It must be noted that this case was a sting operation set up by the FBI. There was no real bribe attempt. It was made by an FBI agent with FBI money. The FBI blew its case. They handed the cash to the supposed accomplice, then panicked and arrested him immediately, not waiting to see whether he would take it to Judge Hastings. The FBI then spent millions of dollars to build a case of circumstantial evidence to prove that Judge Hastings might have taken the money.

Sting cases border on illegal entrapment and are subject to abuse, so the FBI must take every precaution to nail down real evidence.

In this case, the FBI did not obtain real evidence. They could have waited and proved clearly that Judge Hastings would or would not have taken the bribe, but they did not wait. They didn't prove their case.

My message to the FBI is that if you are going to carry out a sting operation, you had better leave the stinger in the victim.

THE IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

Mr. HATCH. Mr. President, today we are at the final stages of one of a handful of unique governmental processes in which a single U.S. citizen can find him or herself battling, essentially alone, against the entire fabric of the Federal Government. There are only a few such procedures, and we do not invoke them very often, but when we do, these activities can produce dire consequences for the individual and his or her family. An independent counsel investigation is one such example. The impeachment before us today is probably the ultimate in such processes.

In Judge Hastings' case, we find an individual who truly has "battled" against the entire Government. He has endured an exhaustive investigation by the executive branch of the Government, and the results of that investigation have been reviewed not once, not twice, but eventually four times by the other two branches of the Government. First there was a jury trial, in which he was acquitted. Then, there was an inquiry by his judi-

cial peers. The judge next appeared before the House of Representatives, and finally he finds himself here for a trial by the Senate. Before we convict him and remove him from office, we need to be convinced he merits that severe sanction.

As has already been noted before this body, this is, in a sense, a case of first impression. While a handful of judges have been impeached in the past, this is the first instance in which the judge has first been acquitted by a jury in a trial based on essentially the same charges. In my review of these earlier impeachments, I am for the most part satisfied that the Senate reached a correct decision. I am, however, concerned that this time, our consideration of this matter may produce the wrong result.

Earlier this year, this body debated charges that this impeachment process should have been barred by the fifth amendment's double jeopardy clause. I am still of the opinion, as I was then, that the double jeopardy clause is irrelevant to impeachment proceedings. I also agree with several of my colleagues who have expressed their opinion that the Senate is not bound by any previous jury or court verdict with respect to a government official facing impeachment. If the Senate were simply to follow the results of a judicial proceeding in reaching a decision on an issue as important as an impeachment, we would be doing a serious disservice to the principles underlying our Constitution and we would severely trample the rights of those facing impeachment. We would also render the impeachment process superfluous in those cases covering charges already adjudicated in the third branch of Government. That seemed to be the prevailing understanding during the Claiborne impeachment, and I think it is equally applicable today.

Nevertheless, I believe that the findings of a jury should be accorded some weight. In Judge Hastings case, the jury heard much of the same evidence that was presented before the Senate Impeachment Committee. That panel reviewed these facts when they were much fresher and when some of the key figures were still available to present testimony. In addition to all of the other information that has been placed before this body, that is a fact that I think we should include in our consideration.

The case against Judge Hastings is based primarily upon circumstantial evidence. The evidence admittedly raises troubling questions and casts suspicion on the Judge's conduct. But for each scenario painted by the House managers with respect to given fact situations, the judge, either through his testimony, or the testimony of other witnesses, has provided a plausible explanation that, in turn, casts doubt on the proper interpretation of the facts.

For example, the House relies heavily on contracts between Judge Hastings and Mr. Borders surrounding significant events in the bribery scheme. While the House managers have urged that their explanation of these facts can be the only explanation, I find many of the judge's explanations to have plausibility. We are, after all, talking about two men who had been close friends for most of their lives. There were undoubtedly many events that brought them into contact or required some form of communication. If we were to rely on some of the impressions left in the record, these key events would be viewed as the only times that they contacted each other. However, if we had a record of every contact that occurred between these two men before, during, and in between these key events, I would not be surprised to find that the frequency of their contacts does not show much fluctuation.

The prosecution also stresses such facts as Mr. Borders' inside knowledge of the Romano brothers' case. While such knowledge may have come from the judge, it is equally plausible to believe that the knowledge came from outside, even underworld, sources, as Judge Hastings has suggested. It is also within reason to believe that the judge was manipulated into making the infamous appearance at the restaurant, once the bribery scheme was under way. The judge's account of that event is not inherently unbelievable.

Also, with respect to the restaurant event, much is made of the exactness of Mr. Border's prediction that the judge would appear. Judge Hastings would like us to focus with equal interest on the fact that Mr. Borders was way off on his prediction as to when the order regarding the forfeited property would be issued. Instead, we are again urged by the House managers to focus on the contacts between the judge and Borders between the predicted date and the actual date of issue of the order. In response, the judge refers us to the explanation that he offered in his testimony, that he was drafting letters, at Mr. Border's request, on behalf of Hemphill Pride. Again, both explanations are believable.

At this point, however, I must express my discomfort with the House manager's heavy reliance on the so-called "coded" telephone conversation regarding the letters. Frankly, I find Judge Hasting's explanation for this recorded phone call as believable as the interpretation expressed by the House managers. It is not unreasonable to believe that the judge and Mr. Borders were talking about actual letters and that Mr. Borders was not exactly truthful when he told the judge that he had spoken to Mr. Pride about the letters or their content. After all, we are talking about a person for whom there was direct evidence that he was involved in the bribery scheme. If he was willing to deceive his friend the judge with respect to the bribery scheme, it is not unreasonable to believe that he may have not been totally truthful with his friend in other matters.

Let me turn to the judge's actions after the arrest of Mr. Borders, which the Judge learned about while in a Washington hotel room. I can only say that again, the House asks us to rely heavily on circumstantial evidence in drawing the conclusion that the judge's actions prove that he was a part of the bribery scheme. I, too, am troubled by his conduct. Judge Hastings has testified that his actions were probably a mistake on his part. But I can understand how a person learning that a close friend had been arrested, that the FBI wanted to talk to him, and suspicious of the FBI, rightly or wrongly, would make a panicky reaction. I think it is fair to say that the FBI has not had a totally spotless record over the years. And the Judge certainly did not seek to hide out from the FBI. We are left with deciding whether to believe the conjecture of the House as to why the judge returned to Florida or to believe the explanation offered by the judge. Since the FBI agents in the case did not "let the money run," we are left with only circumstantial evidence.

Finally, with respect to the charge of the wiretap leak, as best as I can understand, we are left to decide between the testimony of two witnesses—Mayor Clark, to whom the information was supposedly leaked, or Judge Hastings, who maintains that Mayor Clark is simply lying. And again, I would note for my colleagues that we are given two equally plausible explanations as to what actually happened.

Given the degree to which the prosecution relies on circumstantial evidence; and I would also note that there is little, if any, direct evidence; and given the fact that Judge Hastings has provided, in my view, plausible explanations for each of the fact situations presented by the House managers, I believe that the benefit of the doubt must be given to Judge Hastings. I do not believe that the House managers have met their burden of proof, regardless of whatever standard of proof my colleagues might wish to apply.

For me, the circumstantial evidence that exists in this case does not provide the kind of clear and convincing proof which demonstrates that the judge should be removed from the bench.

I would also like to focus on a few other issues that have influenced my decision. First, there is the elapsed time between the events in question and this trial before the Senate. Granted, there are other impeachment cases which have occurred even later from the date of the events than this case. But here we are confronted with the lack of certain key witnesses, such as Mr. Borders and the Romano brothers, and missing evidence, such as conclusive reasons why the Judge and Borders spoke so frequently. As Judge Hasting's counsel noted in his closing remarks, not only are we being asked to look at a part of the donut and assume that there was a whole donut, but we are also asked, in some instances to look at a hole, and assume that there was a donut.

Mr. President, this is a very difficult matter. But just as the jury was not convinced that Judge Hastings was guilty of committing any crime, I am not convinced that Judge Hastings is guilty of committing an impeachable offense. I have carefully followed the Senate proceedings and feel comfortable with this decision. Based solely on the merits of this case, I will vote to acquit on each of the Articles of Impeachment.

THE IMPEACHMENT VERDICT ON JUDGE ALCEE HASTINGS

Mr. DODD. Mr. President, today I voted to find Judge Alcee L. Hastings not guilty on all of the Articles of Impeachment adopted by the House of Representatives.

To participate and vote in an impeachment trial is one of the most difficult and troublesome responsibilities for a Member of the Senate.

I have examined the evidence against Judge Hastings carefully. The evidence on all of the charges against him was circumstantial. Circumstantial evidence, of course, can be very convincing, but not if its elements are themselves subject to serious doubts and possible alternative interpretations as was the case in the trial before us.

In a prior criminal trial Judge Hastings was found not guilty by a jury on the central conspiracy charge of this impeachment process. This acquittal in itself should not be controlling for the Senate, but it is another element in a series, raising questions about the validity of the charges.

While I have found the evidence on articles I through XVI wanting in persuasive power, I am altogether opposed to the idea of an omnibus article, article XVII in this case. In spite of the fact that an omnibus article has usually been part of the charges in the impeachment trials of the 20th century, I am not convinced of either the necessity or the fairness of separately voting on such an article. It seems to me, that an incriminating charge should be able to stand by itself as the basis of an Article of Impeachment. If a charge is too weak, either in the evidence that supports it, or in its relevance in establishing serious misconduct, then that charge should simply be omitted, instead of being repackaged in a so-called catchall article.

I feel reinforced in my doubts by the fact that the 12 members of the Senate Impeachment Trial Committee, those of our colleagues who directly participated in receiving evidence and taking testimony in this matter, split by the narrowest margin, seven of them voting "guilty" and five of them "not guilty" on the articles that formed the core of the charges. The latter five included the chairman of the committee, Senator BINGAMAN, and the vice chairman, Senator SPECTER. I want to take this opportunity to commend them as well as every member of the Trial Committee for the splendid service they provided for the Senate in preparing this difficult case for trial. It was a job of many hours of arduous work and precious few rewards beyond the satisfaction of doing an important service to the Senate and the entire Nation. They are due a large measure of gratitude.

Mr. President, impeachment is a rare and extraordinary procedure under our Constitution. Given this fact and given the numerous uncertainties in the evidence presented, I could not satisfy my own conscience that Judge Hastings is guilty of any of these charges and deserves removal from his office.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise simply to inform my colleagues that today is the 1,679th day that Terry Anderson has been held in captivity in Beirut.

VISIT OF DELEGATION FROM SUPREME SOVIET

Mr. MITCHELL. Mr. President, it gives me great pleasure to announce today that the distinguished Republican leader and I will welcome next week a delegation of members from the Supreme Soviet to the United States.

This distinguished delegation will be led by Yevgeniy M. Primakov, Chairman of the Soviet of the Union of the Supreme Soviet, and will include nine additional members of the Supreme Soviet of the U.S.S.R.

Many of the changes in the Soviet Union today are reflected by the reconstituted Supreme Soviet with its new rules, its internal factions, and its differing points of view. We all welcome those changes, as do the people of the Soviet Union.

Many of us in the Senate have been to the Soviet Union and have found that the experience of being in the country valuable in weighing the policy goals our Nation should pursue.

At no time has it been more important for the members of the Supreme Soviet to begin to visit the United States and to gain for themselves and their government the insight and understanding based on firsthand observation.

Members of the Senate are used to bemoaning the information overload to which we are all subjected.

It often seems hard to have the time to read enough briefing materials, master sufficient facts, and think slowly enough through practical policy alternatives. What we do not lack is the means by which to learn about issues. There is no shortage of information. There is a shortage of time.

The new Supreme Soviet faces both shortages. Not only is the Soviet Union emerging from a period in which information was fragmentary and not always readily available; the economic problems facing the Soviet people demand effective and speedy remedies.

The movement toward a more democratic society in the Soviet Union will prosper in relation to the success of the representative legislature. Our two centuries of experience have shown that with all its shortcomings, a representative legislature remains both the safest and most responsive element of a democratic government.

An elected legislature which ceases to be responsive ceases to be elected. The genius of our Founders gave the United States this institution. The Soviet Union is attempting to build what we hope will be a similar institution under extraordinarily difficult conditions.

Our ultimate goal of a world of peace and cooperation will be enhanced by its success; it risks being delayed by its failure.

I believe that one way we can help the process is to reciprocate the hospitality many of us have enjoyed in the Soviet Union by welcoming to the United States members of the Supreme Soviet.

The distinguished Republican leader and I are therefore looking forward to welcoming a delegation from the Supreme Soviet for a week-long visit, beginning next Wednesday. I invite and encourage all Senators to take the opportunity to meet and exchange views with our visitors. I am certain it will prove to be a mutually beneficial and productive experience.

Mr. President, I am especially pleased that the delegation from the Supreme Soviet will be visiting my home State of Maine during their stay in our country. Our guests will have

the opportunity to sample the beauty of our State and the hospitality of Maine citizens during their visits to Bangor and Portland. I am confident that the people of Maine will give our Soviet guests a warm New England welcome.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, further proceedings under the quorum call are dispensed with.

RECORD TO REMAIN OPEN UNTIL 4 P.M.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the RECORD remain open until 4 p.m. today for the introduction of bills and statements.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. I ask unanimous consent that the Senate proceed to executive session to consider the following nominations, calendar items Nos. 447 and 448. I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read en bloc, that the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

ENVIRONMENTAL PROTECTION AGENCY

LaJuana Sue Wilcher, of Kentucky, to be an Assistant Administrator of the Environmental Protection Agency.

E. Donald Elliott, of Connecticut, to be an Assistant Administrator of the Environmental Protection Agency.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MESSAGE FROM THE HOUSE RECEIVED ON YESTERDAY

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

A message from the House of Representatives received on yesterday, October 19, 1989, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 801. An act to designate the U.S. Court of Appeals Building at 56 Forsyth Street in Atlanta, GA, as the "Elbert P. Tuttle United States Court of Appeals Building";

H.R. 3385. An act to provide assistance for free and fair elections in Nicaragua; and

H.J. Res. 380. Joint resolution designating October 18, 1989, as "Patient Account Management Day."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

MESSAGES FROM THE HOUSE

At 11:38 a.m., a message from the House of Representatives announced that the Speaker makes the following supplemental appointments in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3299) entitled "An act to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990":

As additional conferees for consideration of subtitles D and E of title III of the House bill, and modifications committed to conference: Mr. MILLER of California and Mr. FAWELL.

The second panel appointed from the Committee on Education and Labor is appointed also for consideration of sections 11851 through 11894 of the House bill, and modifications committed to conference.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 2990. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1990, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN from the Committee on the Judiciary without recommendation with amendments:

S. 32: A bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes (Rept. No. 101-170).

By Mr. BIDEN from the Committee on the Judiciary without amendment:

H.R. 972: A bill to amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. KASTEN (for himself and Mr. LOTT):

S. 1774. A bill to amend the Internal Revenue Code of 1986 to repeal section 89 nondiscrimination rules; to the Committee on Finance.

By Mr. SYMMS (for himself, Mr. WILSON, Mr. BURDICK, Mr. CHAFEE, and Mr. DOLE):

S. 1775. A bill to amend title 23, United States Code, to provide highway emergency relief for damages resulting from the Northern California earthquake which occurred on October 17, 1989; to the Committee on Environment and Public Works.

By Mr. KOHL:

S. 1776. A bill to amend the Agricultural Act of 1949 to establish a dairy price support and supply management program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL (for himself and Mr. KASTEN):

S. 1777. A bill to amend the Agricultural Adjustment Act to improve the marketing of milk and its products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HARKIN:

S. 1778. A bill to amend the Higher Education Act of 1965 to reduce the student loan default rate, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BENTSEN (for himself, Mr. DIXON, Mr. SIMON, Mr. METZENBAUM, and Mr. HEFLIN):

S. 1779. A bill to change the tariff treatment of certain brooms wholly or in part of broom corn; to the Committee on Finance.

By Mr. DOLE (for Mr. WILSON):

S.J. Res. 217. A joint resolution to designate the period commencing February 4, 1990, and ending February 10, 1990, as "National Burn Awareness Week"; to the Committee on the Judiciary.

By Mr. INOUYE (for himself, Mr. ADAMS, Mr. BINGAMAN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. BURNS, Mr. COCHRAN, Mr. CONRAD, Mr. CRANSTON, Mr. DASCHLE, Mr. DECONCINI, Mr. DODD, Mr. DOMENICI, Mr. GARN, Mr. GORTON, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. LUGAR, Mr. MACK, Mr. MATSUNAGA, Mr. MCCAIN, Mr. MCCLURE, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NUNN, Mr. PACKWOOD, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SASSER, Mr. SHELBY, and Mr. WIRTH):

S.J. Res. 218. A joint resolution to designate the week of December 3, 1989, through December 9, 1989, as "National American Indian Heritage Week"; to the Committee on the Judiciary.

By Mr. MITCHELL:

S.J. Res. 219. A joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended; to the Committee on Appropriations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KASTEN (for himself and Mr. LOTT):

S. 1774. A bill to amend the Internal Revenue Code of 1986 to repeal section 89 nondiscrimination rules; to the Committee on Finance.

REPEAL OF SECTION 89 NONDISCRIMINATION RULES

Mr. KASTEN. Mr. President, last week the Senate passed H.R. 3299, the omnibus budget reconciliation bill, by an overwhelming margin. I supported this stripped-down reconciliation bill, and as a member of the House-Senate conference committee, I will support efforts to craft a conference report free of extraneous provisions.

At the same time, I am very concerned about a number of essential provisions which were stripped from the bill before final passage. Principal among those was the repeal of section 89 of the Internal Revenue Code. Today I am introducing important new legislation to accomplish this goal.

Mr. President, this Congress has come a long way in the debate over section 89. The consensus of this issue has shifted dramatically over the past 6 months, and now I am convinced the Senate is ready to embrace the approach I have advocated all along. That approach is simple and straightforward—repeal section 89 and fully restore the nondiscrimination rules that existed under prior law.

The reason that section 89 is destined to be repealed is that it is a solution in search of a problem. There were nondiscrimination rules under the old tax law that were reasonable and that worked. There is no compelling need for section 89, and I think my colleagues realize that. My bill would repeal section 89, and restore prior law rules. A nondiscrimination safety net will be maintained, without jeopardizing the survival of America's small businesses.

This approach has broad support. Similar language received 390 votes in the House of Representatives, and was unanimously approved by the Senate Finance Committee. My legislation will further improve upon the Finance Committee's bill and provide for an orderly transition to pre-1986 nondiscrimination rules. It has the strong support of both the small business and employee benefit communities, and deserves prompt Senate action.

I would like to thank Senator LOTT for his outstanding leadership on this issue, and for the many hours he and his staff put into the drafting of this bill. The Senator from Mississippi introduced the first section 89 repeal bill, and he joins me in introducing this improved section 89 repeal bill today.

Mr. President, on December 1, which is just 6 short weeks away, every employer in the country must be in compliance with section 89. Congress must act soon to keep this from happening. The results of letting section 89 take effect would be devastating. I urge my colleagues to join in supporting the outright repeal of section 89.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1774

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF SECTION 89.

(a) IN GENERAL.—Section 89 of the Internal Revenue Code of 1986 (relating to benefits provided under certain discriminatory employee benefit plans) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 89.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 1151 of the Tax Reform Act of 1986.

SEC. 2. REINSTATEMENT OF PRE-1986 ACT NONDISCRIMINATION RULES.

(a) IN GENERAL.—

(1) Each provision of law amended by subsection (b), (c) (other than paragraph (2)), (d)(1), (f), (g), (h) (other than paragraph (3)), or (k)(3) of section 1151 of the Tax Reform Act of 1986 is amended to read as if the amendments made by such subsection had not been enacted.

(2) Each provision of law amended by paragraph (22), (27), or (31) of section 1011B(a) of the Technical and Miscellaneous Revenue Act of 1988 is amended to read as if the amendments made by such paragraph had not been enacted.

(3) Subparagraph (A) of section 125(g)(3) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended by striking "described in subparagraph (B) of section 410(b)(1)" and inserting "who qualify under the classification established by the employer and such classification is found by the Secretary not to be discriminatory in favor of highly compensated individuals".

(4) Section 162(l)(2) of such Code is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(5) Subparagraph (C) of section 401(a)(9) of such Code is amended—

(A) by striking "(as defined in section 89(i)(4))", and

(B) by adding at the end the following: "For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).".

(6)(A) Subparagraph (C) of section 414(n)(3) of such Code is amended by striking "89,".

(B) Paragraph (1) of section 414(r) of such Code is amended by striking "sections 89 and" and inserting "section".

(C) Paragraph (2) of section 414(t) of such Code is amended by striking "89,".

(7) Paragraph (3) of section 505(b) of such Code is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (7)".

(8) Sections 3021(c) and 6070 of the Technical and Miscellaneous Revenue Act of 1988 are hereby repealed.

(b) EXCEPTIONS.—

(1)(A) Paragraph (7) of section 79(d) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended to read as follows:

"(7) EXEMPTION FOR CHURCH PLANS.—This subsection shall not apply to a church plan maintained by a church for church employees. For purposes of the preceding sentence, the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).".

(B) Paragraph (2) of section 223(d) of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subparagraph:

"(D) SECTION 79(d).—Unless the employer elects otherwise, the references to section 79(d) in this paragraph shall be treated as references to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986."

(2) Paragraph (2) of section 125(d) of such Code (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended to read as follows:

"(2) DEFERRED COMPENSATION PLANS EXCLUDED.—

"(A) IN GENERAL.—The term 'cafeteria plan' does not include any plan which provides for deferred compensation.

"(B) EXCEPTION FOR CASH AND DEFERRED ARRANGEMENTS.—Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

"(C) EXCEPTION FOR CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

"(i) all contributions for such insurance must be made before retirement, and

"(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 1151 of the Tax Reform Act of 1986.

SEC. 3. OTHER PROVISIONS RELATING TO NONTAXABLE BENEFITS.

(a) TREATMENT OF LEASED EMPLOYEES.—

(1) REPLACEMENT OF HISTORICAL TEST WITH CONTROL TEST.—Subparagraph (C) of section 414(n)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

"(C) such services are performed by such person under the control of the recipient."

(2) SERVICES INCIDENTAL TO SALES OR CONSTRUCTION DISREGARDED.—Paragraph (2) of section 414(n) of such Code is amended by adding at the end thereof the following new flush sentence:

"The term 'leased employee' shall not include an individual solely because such individual is performing services incidental to the sale of goods or equipment or incidental to the construction of a facility. Such term shall include the support staff of professional employees."

(b) APPLICATION OF LINE OF BUSINESS TEST FOR PERIOD BEFORE GUIDELINES ISSUED.—In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code.

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to years beginning after December 31, 1983.

(2) The provisions of subsection (b) shall apply to years beginning after December 31, 1986.

SEC. 4. CONGRESSIONAL INTENT.

In repealing section 89 of the Internal Revenue Code of 1986, the Congress wishes to return to the nondiscrimination standards of prior law. Toward this end, it is intended that prior nondiscrimination standards are to be interpreted and applied by the Secretary of the Treasury in a manner that is consistent with the Secretary's practices before the enactment of the Tax Reform Act of 1986. In addition, the Congress recognizes that the nature of welfare benefits differs from the nature of pension benefits. Therefore, it is specifically intended that the Secretary of the Treasury shall interpret the rules applied to benefits under sections 79 and 125 of the Internal Revenue Code of 1986 in a different manner than the rules applied to qualified retirement plan benefits, even where the statutory requirements with respect to such benefits are similar.

By Mr. SYMMS (for himself, Mr. WILSON, Mr. BURDICK, Mr. CHAFEE, and Mr. DOLE):

S. 1775. A bill to amend title 23, United States Code, to provide highway emergency relief for damages resulting from the northern California earthquake which occurred on October 17, 1989; to the Committee on Environment and Public Works.

HIGHWAY EMERGENCY RELIEF FOR EARTHQUAKE AREA OF NORTHERN CALIFORNIA

Mr. SYMMS. Mr. President, I think all Americans have felt great sympathy and concern for our fellow Americans in the San Francisco Bay area who have suffered greatly this week.

One of the major problems of the area is the transportation system, with the bay bridge being temporarily knocked out, the Nimitz Freeway knocked out, and many other road problems. It has created a great many problems in that area. This is one area where I think it will require some action on the part of this body and the other body to facilitate the expenditures of Federal dollars to take care of those roads.

I have been in consultation with Senator WILSON, who is in California, on this and I have discussed it with people from the Department of Transportation. I have prepared legislation that I am going to send to the desk to be printed in the RECORD and assigned to the appropriate committee.

I do not know what the wishes of the majority leader and minority leader will be next week. We have passed legislation, I might say, of this nature in 1985, when I was privileged to be chairman of the Transportation Subcommittee, for the States of West Virginia, California, and Utah to waive the cap. But I want to give my colleagues a little information.

When I send this bill to the desk, it will be sent on behalf of myself and Mr. WILSON, Mr. BURDICK, Mr. CHAFEE, and Mr. DOLE.

I ask unanimous consent that it remain open throughout the day for other Senators who wish to join in this effort. We would like to have other sponsors. Maybe this bill will move rapidly. I do not believe it will be controversial.

I will give a little update on the situation. This week the President signed an emergency declaration, and the California Transportation Department has notified the Federal Highway Administration of their intent to request emergency relief funds.

For the information of all Senators, there are currently $219 million available in the emergency relief fund which gets an annual authorization of $100 million. Those $219 million currently in the fund include unused funds from previous years.

The $100 million cap is what is allowed for each disaster. I will speak a little more about that in a moment.

There is currently no reliable estimate of how much the cost of the roads will be, but it is very likely it is going to exceed $100 million. I have received estimates of up to $300 million and over $200 million. I think that that is a moving target.

Mr. President, there are other issues addressed in this legislation. The Oakland Bay Bridge is a toll facility. Federal aid funds cannot be used on toll facilities, generally speaking, and the Federal Highway Administration has determined that the bay bridge is ineligible for emergency relief funds. Also, California would lose money in the 85-percent minimum category, which is part of our highway formula allocation, because of the receipt of the emergency relief funds.

In addition, emergency relief funds are reimbursed at 100 percent Federal money for the work done in the first 90 days. State matching funds are required for work done thereafter. I think it is important that this is an issue that may require further action. We did not address this in the bill, but this is an issue that needs to be looked at.

No. 1, this legislation would make the bay bridge eligible for emergency relief funds minus any insurance coverage that may exist. I am told that California has insurance coverage to cover the loss of tolls during the period that the bridge is shut down but not the reconstruction of it.

The legislation holds California's 85-percent fund harmless relative to any emergency relief funds they may receive for this disaster. We did not do anything about the 90-day matching requirements as yet, but it is an issue that I think should be considered as soon as the relevant facts are made available to us and FHWA and State officials can determine what period of time will be required to facilitate these repairs.

Just another little bit of information. I think it is important in asking Senators for support of this legislation so you know the facts.

Mr. President, California received $1.3 billion in Federal highway funds in fiscal year 1988. That is approximately 10 percent of the total annual program, but about 10 percent of the American people live in California. That was about $1 return to the State of California for every dollar contributed to the trust fund by California highway users.

The other question that Senators will ask is, Is the money available? The highway account of the trust fund carries a cash balance of approximately $10 billion. Plenty of funds are available to meet the needs of this disaster.

I emphasized this point last night on a program carried in California, along with Congresswoman BARBARA BOXER. The money will be available for this disaster, but the question people ask, where does the money come from, comes back to a constitutional question. Why is it that we tax people for highways and then spend the money on other Federal programs, whether it be paying attorneys at the Justice Department or National Endowment for the Arts, or buying F-15's for the Air Force? Those funds are spent in a unified budget process for other purposes. But the account does carry a $10 billion surplus, and there is money there to meet this disaster.

Mr. President, I send the bill to the desk, and I hope my distinguished colleague from New York, the chairman of the Infrastructure Subcommittee, will choose this legislation, but I think he wants time to look at it and study it.

I send the bill to the desk, along with a very brief analysis of the bill to be printed in the RECORD.

I ask for other Senators to sponsor this legislation so we can get expeditious action on it, which has been re-

quested by our friend and colleague, Senator WILSON from California, who is in California at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1775

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 125(a) of title 23, United States Code, is amended by adding at the end the following:

"Such sums as may be necessary are authorized to be appropriated from the Highway Account of the Highway Trust Fund to be expended under this section for repair or reconstruction of highways on the Federal-aid systems which the Secretary shall find have suffered serious damage as a result of the Northern California earthquake which occurred on October 17, 1989; such sums are in addition to the sums otherwise provided in this subsection, are not subject to any limitation on expenditure in a fiscal year, are not subject to the proviso in (b)(1) of this section limiting obligations for a single natural disaster, shall be available until expended, are not subject to an obligation limitation for Federal-aid highway and highway safety construction programs, and may be expended on the Bay Bridge notwithstanding the toll provisions of this title. *Provided,* that insurance payments shall be deducted from construction costs.

SEC. 2. Section 157(a)(3) of title 23, United States Code, is amended by adding subparagraph (c) as follows:

"(C) EXCEPTION. The amount allocated to the State of California under this paragraph shall be the amount allocated to such state under this subsection as if 'emergency relief under section 125,' were inserted before 'forest highways' in subparagraph (A)."

ANALYSIS

This bill provides such sums as may be necessary for damages to Federal-aid highways which resulted from the October 17, 1989 Northern California earthquake. The sums are not subject to limitations on expenditure in a fiscal year, are not subject to the proviso limiting obligations for a single natural disaster, are available until expended, and are not subject to any obligation limitation. Under title 23, United States Code, contract authority is provded. The bill also permits the expenditure of the emergency relief funds on the Bay Bridge notwithstanding toll provisions of title 23, United States Code, changes the minimum allocation formula for California.

Mr. SYMMS. Mr. President, I say to the distinguished Senator from New York, I hope there is no feeling that there is any kind of partisanship involved with respect to the highway funding for the State of California. This initiative was my own. I was called by the junior Senator from California. I discussed this with the senior Senator from California yesterday and today. I think there is no effort by the Federal Highway Administration to in any way bypass the chairman or other Senators on this issue. I have not actually talked with anyone other than congressional liaison people from DOT with respect thereto.

Mr. MOYNIHAN. Good. I am glad to hear that.

Mr. SYMMS. I want to make it very clear for the record this is something I knew needed to be done. We had past experience with the disaster in West Virginia and the disaster on Highway 101 in California.

This cap needs to be raised. Senator MOYNIHAN is quite right, Mr. President. The money is there. There is $100 million available. I think we could get into a debate as to where the phantom $10 billion is in the trust fund, but I think most of us in Washington are used to that kind of bookkeeping.

If Senators are asked by reporters where is the money going to come from, do we have to raise taxes to get it, the answer to that is no. There is already $219 million available for this particular project. We have to raise the cap to spend over $100 million.

But I think this makes the point that some of us have been talking about on the Senate floor, that there is a constitutional question about taxing people for a trust fund and spending the money for something else. This, in my opinion, drives home the point that if the $10 billion were in the trust fund, it would be available without any question about its budgetary effects. I thank my colleague.

I do think that we might say—and I made this very clear last night, I say to my good friend, on television—there has been some political dispute raised by the mayor of San Francisco about whether the Vice President did everything he should have done. I made the point that in the Senate there is no partisanship on this issue; that I have been in discussions with Senator MOYNIHAN and Senator CRANSTON about it, and we were just trying to get the job done from this end.

I think we also have to recognize the fact there is a Governor's race going on in the biggest State in the Union, California, and we have one of our colleagues as a candidate for Governor, so obviously there is some interest in both political parties as to who is going to ultimately be Governor. I accept that as a Republican, and I am sure that my senior colleague from New York, the chairman of the subcommittee, accepts that as a Democrat. But I hope we could stay away from the politics in the highway program.

Mr. MOYNIHAN. Mr. President, I thank the distinguished Senator from Idaho and we will proceed in that matter.

Mr. MOYNIHAN. I rise briefly to associate myself with the concerns of the Senator from Idaho who is a friend. We have gone back and forth as chairman of this committee over the last decade. I want to say to him and to say to other Members of the Senate that the Committee on Environment and Public Works will address this matter directly. Senator BURDICK, the distinguished chairman, has assured me this will be done and, of course, it will be.

There is now, as the Senator from Idaho observed, $219 million in the emergency accounts of the Federal Highway Administration.

So there is no question of money being available, to the extent it would be needed. We have a 2- to 3-year enterprise here.

I will want to hold hearings, Mr. President, to ask the necessary question: How is it that 60-story skyscrapers survived in this event in California with no damage of any kind and 2-story highways collapsed? It is a question of engineering, as there was a question when a bridge went out in Connecticut on the Interstate Highway System, as the distinguished Presiding Officer well knows, and as there was a question when a bridge collapsed on the New York State Thruway. In both those cases, we provided responses. The thruway was a toll road and arrangements were made, as the Senator from Idaho indicates he knows.

The Interstate System is now in effect completed. Our last Highway Act of 1987 provided for the end of the construction period, over 40 years. But we also observed that there are portions that fall down more readily than they ought to. They do not withstand shocks. If we can do it for a 60-story skyscraper, we can do it for a 2-story highway. We want to know about that. We will help.

I would like to think that this would be a nonpartisan effort. There are no politics in this. If the Administrator of the Federal Highway Administration is listening or watching, I would hope he might record—he is new on the job—that it would have been thoughtful to let the chairman of the Subcommittee on Water Resources, Transportation, and Infrastructure know of their wishes. If they want a party line vote, please say so.

I do not think they do, but they are acting as if they do. I think the President would be very unhappy. If the Chief of Staff knew, I think he would be unhappy, too. I am not unhappy, I want to say.

The House is also responding, and we will get this money to California, of course. As the Senator from Idaho says, there must be assessed the subject why did the Nimitz Freeway collapse in a situation where other ostensibly much more exposed structures did not. But that is what hearings are for, and we will get right to them.

I thank the Senator from Idaho for bringing this before us, and assure him the same cooperation he will have from me as I always have from him.

Mr. President, I ask unanimous consent that a copy of the joint resolution making further continuing appropriations adding funding to meet the present emergency introduced today in the other body, be printed in the RECORD at this point.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

H.J. RES. 423

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution of September 29, 1989 (Public Law 101-100), is hereby amended by striking out "October 25, 1989" and inserting in lieu thereof "November 15, 1989" in section 102(c), and by adding the following new section:

"SEC. 108. (a) For necessary expenses in carrying out the functions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), an additional $1,000,000,000 for fiscal year 1990 to meet the present emergency, to remain available until expended.

"(b) For an additional amount to meet the present emergency to the Emergency Fund authorized by 23 U.S.C. 125, $1,000,000,000, to be derived from the Highway Trust Fund: *Provided,* That the provisions of 232 U.S.C. 120(f)(1) and 125(b)(1) shall not apply to amounts available in this Fund: *Provided further,* That obligations made from this Fund shall be in addition to the limitation on obligations established in the Department of Tansportation and Related Agencies Appropriations Act, 1990.

"(c) For additional capital for the "Disaster loan fund", authorized by the Small Business Act, as amended, $500,000,000, to remain available without fiscal year limitation to meet the present emergency of which not to exceed $30,000,000 may be transferred to the "Salaries and expenses" account of the Small Business Administration for disaster loan servicing and disaster loan making activities.

"(d) For an additional amount necessary to enable the President to meet unanticipated needs to meet the present emergency arising from the consequences of the recent natural disasters, there is appropriated $250,000,000, to remain available until expended: *Provided,* That these funds may be transferred to any authorized governmental activity to meet the requirements of the natural disasters.

"(e) Such other amounts will be made available subsequently as required.

"(f) Obligations incurred under this section shall not be a charge against the Budget Act, Gramm-Rudman-Hollings, or other ceilings.

"This section may be cited as the fiscal year 1990 Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National Significance.".

By Mr. KOHL:

S. 1776. A bill to amend the Agricultural Act of 1949 to establish a dairy price support and supply management program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL (for himself and Mr. KASTEN):

S. 1777. A bill to amend the Agricultural Adjustment Act to improve the marketing of milk and its products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

DAIRY EQUITY ACT AND THE MILK MARKETING ORDER EQUITY ACT

Mr. KOHL. Mr. President, next year Congress faces the daunting task of rewriting Federal farm programs in an era of tight budget constraints.

It will be a difficult task. But I rise today to introduce two bills that demonstrate that our Federal dairy policy can be both fiscally responsible and economically advantageous for the dairy sector.

Before developing this legislation, I consulted closely with the dairy industry in Wisconsin. While every dairy producer, farm organization and cooperative in the State may not agree with all provisions, I am confident that most agree with the substantive reforms called for in both bills.

The first of the two, the Dairy Equity Act, is based on one basic tenet: That the freefall we've seen in price supports over the past 5 years must not be allowed to continue.

The price support for milk and milk products should provide price stability. This bill assures that by tying price support adjustments to changes in the all-milk price. This will still allow the price support to move—up in a year of strong markets, or down in a year of surplus—but in small increments.

To keep the dairy program in balance, the bill relies on a stand-by supply management program—one that kicks in for any year that CCC purchases exceed 4 percent of the commercial use of dairy products, calculated on a total solids basis.

To limit Federal outlays, the bill requires that the costs of the supply management program be borne by producers.

If producers are to be asked to shoulder the costs of a supply management program, it follows that producers should be allowed to dictate the program's design. My bill would establish an elected dairy producer board to develop the supply management program—allowing the board discretion to implement two-tiered pricing, target price-deficiency payments, a voluntary diversion or whole-herd buy-out program, or any other program of the board's choosing.

The second bill, Mr. President—the Milk Marketing Order Equity Act—addresses the other half of Federal dairy policy: milk marketing orders. I am pleased that my colleague, the senior Senator from Wisconsin, Senator KASTEN, is joining with me in introducing this legislation today.

While the dairy industry's efficiency has changed dramatically since 1933—when market orders were established—milk orders have unfortunately changed very little.

The effect of these antiquated orders, according to a recent General Accounting Office report, has been not only to promote unnecessary dairy production in certain parts of the country, but to benefit producers in some regions at the expense of others.

Mr. President, the producers being disadvantaged are those in the upper Midwest—producers as efficient as any in the country.

This bill would simply give producers in the upper Midwest an opportunity to compete on an equal footing with producers in all milk markets.

It does so by rewriting the purpose of milk orders—to prohibit discriminatory pricing or other economic disincentives to the sale of fluid milk in any order at competitive prices, and to minimize the overall cost of providing fluid milk to consumers.

It also makes immediate changes in class I differentials—differentials legislated in the 1985 farm bill that gave producers in Florida a $1.03 price increase while offering upper Midwest producers a mere increase of 8 cents.

Many of my colleagues are likely to argue that this bill will cause an economic hardship to dairy farmers in their State.

Mr. President, no producer will be disadvantaged by this bill. Should they think so, however, the bill improves the ability of producers covered by any order to challenge—administratively or legally—the provisions of any order.

Mr. President, by introducing these bills today, I hope to do more than just spark some new discussion. These proposals identify the changes of greatest importance to the Wisconsin dairy industry. They also, however, identify changes which can benefit producers, consumers and taxpayers across the country. I look forward to working with members of the Agriculture Committee, and the distinguished Chairman of the Committee, Senator LEAHY, to incorporate these changes in the dairy title of the 1990 farm bill.

Mr. President, I ask unanimous consent that the text of these two bills appear in the RECORD at this point.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1776

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Dairy Equity Act of 1989".

SEC. 2. DAIRY PRICE SUPPORT AND SUPPLY MANAGEMENT PROGRAM.

Effective January 1, 1990, subsection (d) of section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) is amended to read as follows:

"(d)(1)(A) During the period beginning on January 1, 1990, and ending on December

31, 1995, the price of milk shall be supported as provided in this subsection.

"(B) During the period beginning on January 1, 1990, and ending on December 31, 1990, the price of milk shall be supported at a rate equal to $10.60 per hundredweight for milk containing 3.67 percent milkfat.

"(C) Except as provided for in subparagraph (D), on January 1, 1991, and each January 1 thereafter through January 1, 1994, the Secretary shall adjust the rate of price support for milk (as in effect on such date) by an amount equal to 50 percent of the estimated change in the average all-milk price per hundredweight during the preceding calendar year from the next preceding calendar year.

"(D) Not later than November 1, 1990, and each November 1 thereafter through November 1, 1993, for purposes of carrying out this subsection, the Secretary shall estimate—

"(i) the level of total milk solids contained in milk and products of milk purchased under this subsection; and

"(ii) the level of total commercial use of total milk solids contained in milk and the products of milk.

"(E) The price of milk shall be supported through the purchase of milk and the products of milk.

"(2)(A) If the level of total milk solids contained in milk and products of milk purchased under this subsection for any of the calendar years 1991 through 1995, as estimated by the Secretary by November 1 of the preceding calendar year, will exceed 4 percent of the level of total commercial use of total milk solids contained in milk and the products of milk for such calendar year, the Secretary shall institute on January 1 of such calendar year the supply management program recommended by the Dairy Producer Board established under paragraph (3)(A) in accordance with this paragraph.

"(B) In carrying out the program referred to in subparagraph (A), the Secretary may—

"(i) offer incentive or deficiency payments, administer a nonrecourse loan program for milk and the products of milk, or collect assessments or other forms of payments on all or a part of the milk or products of milk produced by the producers on a farm;

"(ii) establish production histories for such producers;

"(iii) establish payment limitations for participants in such program; or

"(iv) take such other actions as are necessary to carry out such program.

"(C) In developing and carrying out any program under subparagraph (A) involving the making of payments to producers or the collection of assessments from producers, the Dairy Producer Board and Secretary shall ensure that—

"(i) such producers comply with production adjustment objectives;

"(ii) the terms of such payments and assessment are applied equally with respect to all such producers and not on a regional basis;

"(iii) such assessments or other forms of payments are applied in such a way as to constitute a supply management program rather than on a uniform basis, unless a uniform assessment is combined with payments made to producers who comply with production adjustment objectives;

"(iv) such assessments or other forms of payments shall only be used to offset the costs of operating such program; and

"(v) such payments, taken in conjunction with such assessments, do not result in additional costs to the Commodity Credit Corporation in implementing the program established under subparagraph (A).

"(D) In any calendar year in which such program is in effect, the Secretary, not later than November 1 of such calendar year, shall estimate the level of purchases of milk and milk products in the next calendar year if such program were terminated or continued.

"(E) In carrying out subparagraph (D), if the Secretary estimates that—

"(i) on the termination of such program the level of total milk solids contained in milk and products of milk purchased by the Commodity Credit Corporation in the next calendar year will equal 4 percent or less of the total commercial use of total milk solids contained in milk and products of milk in such calendar year, the Secretary shall terminate such program on January 1 of such calendar year;

"(ii) on the termination of such program the level of total milk solids contained in milk and products of milk purchased by the Commodity Credit Corporation in the next calendar year will exceed 4 percent of the total commercial use of total milk solids contained in milk and milk products in such calendar year, the Secretary shall continue such program for such calendar year; or

"(iii) on the continuation of such program the level of total milk solids contained in milk and products of milk purchased by the Commodity Credit Corporation in the next calendar year will exceed 4 percent of the total commercial use of total milk solids contained in milk and products of milk, the Secretary shall continue such program for such calendar year and shall institute such additional changes to such program as are recommended by the Dairy Producer Board established under paragraph (3)(A) that will result in reducing the level of such purchases to less than 4 percent of the total commercial use of total milk solids contained in milk and milk products in the next calendar year.

"(3)(A) Not later than July 1, 1990, the Secretary shall establish a Dairy Producer Board (hereinafter in this paragraph referred to as the 'Board') that shall consist of 18 members elected from 18 geographically contiguous districts of approximately equal volume in the production of milk and the products of milk, as determined by the Secretary.

"(B) Prospective members of the Board for a district shall be nominated by—

"(i) organizations that are certified under section 114 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4505); or

"(ii) the submission of nomination papers bearing signatures of at least 2 percent of the producers of milk within such district.

"(C)(i) The Secretary shall conduct a referendum among producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for total commercial use in a district for the purpose of electing a member of the Board for such district.

"(ii) The Secretary shall not permit bloc voting in such referendum by cooperatives of producers of milk and products of milk.

"(D) Each member of the Board shall be elected to serve for a 4-year term.

"(E) Each member of the Board shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing duties related to service on the Board, including a per diem allowance as recommended by the Board and approved by the Secretary.

"(F) During the first meeting of the Board, the Board shall elect a Chairperson who shall serve for a 1-year term. The Chairperson may serve for no more than 2 consecutive terms.

"(G) A quorum of the Board shall consist of 11 members of the Board.

"(H) Not later than January 1 of any calendar year for which the Secretary has determined there shall be a supply management program under paragraph (2), subject to paragraph (2)(C), the Board shall provide to the Secretary a description of such program, including a description of—

"(i) whether participation in such program shall be voluntary or mandatory;

"(ii) whether production histories for the producers of milk shall be established and, if so, the method by which such histories shall be established;

"(iii) whether incentive or deficiency payments for the producers of milk shall be offered and, if so, the amount and manner in which such payments shall be offered;

"(iv) whether assessments or other forms of payments on producers of milk shall be collected and, if so, the amount and manner in which such assessments shall be collected; and

"(v) whether payment limitations shall be instituted on participants in such program and, if so, the method by which such payment limitations should be used to target benefits to small- and medium-sized farms.

"(I) If the Secretary estimates under paragraph (2)(E)(iii) that on the continuation of a supply management program the level of total milk solids contained in milk and products of milk purchased by the Commodity Credit Corporation in the next calendar year will exceed 4 percent of the total commercial use of total milk solids contained in milk and products of milk, the Dairy Producer Board shall develop and recommend to the Secretary additional changes to such program that will result in reducing the level of such purchases to less than 4 percent of the total commercial use of total milk solids contained in milk and milk products in the next calendar year.

"(J) The Secretary shall provide such staff of the Department of Agriculture as the Board needs to carry out this subsection.

"(4)(A) Each producer who markets milk and each person required to make payment to the Corporation under this subsection shall keep such records and make such reports, in such manner, as the Secretary determines necessary to carry out this subsection.

"(B) The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this subsection or to determine whether any person subject to this subsection has engaged or is engaged or is about to engage in any act or practice that constitutes or will constitute a violation of this subsection or regulation issued under this subsection. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or

carries on business, in requiring the attendance and testimony of witnesses and the production of records. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony on the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district of which such person is an inhabitant or wherever such person may be found.

"(5)(A)(i) The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, this subsection or any regulation issued under this subsection.

"(ii) Any such civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General minor violations of this subsection whenever the Secretary believes that the administration and enforcement of this subsection would be adequately served by suitable written notice or warning to any person committing such violation.

"(B)(i) Each person who fails to remit to the Corporation the funds required to be collected and remitted pursuant to this subsection shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies.

"(ii) The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(iii) Each person who knowingly violates any other provision of this subsection, or any regulation issued under this subsection, shall be liable for a civil penalty of not more than $1,000 for each such violation.

"(iv) Any penalty provided for under this subparagraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(C)(i) Any person against whom a penalty is assessed under subparagraph (B) may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after such penalty is imposed.

"(ii) The Secretary shall promptly file in such court a certified copy of the record upon which the penalty is based. The findings of the Secretary may be set aside only if found to be unsupported by substantial evidence.

"(D) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under subparagraph (B).

"(E) The remedies provided in this paragraph shall be in addition to, and not exclusive of, other remedies that may be available.

"(F) In carrying out this subsection, the Secretary may, as the Secretary considers appropriate—

"(i) use the services of State and county committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); and

"(ii) enter into agreements to use, on a reimbursable or nonreimbursable basis, the services of administrators of Federal milk marketing orders and State milk marketing programs.

"(6) The Secretary shall carry out this subsection through the Commodity Credit Corporation.

"(7) As used in this subsection:

"(A) The term 'all-milk price' means the all-milk price as calculated and reported by the United States Department of Agriculture on a monthly basis.

"(B) The term 'total commercial use' shall include domestic commercial disappearance and commercial exports.

"(C) The term 'total milk solids' means the aggregate quantity of milkfat and milk solids-not-fat in milk and the products of milk.".

SEC. 3. APPLICATION OF SUPPORT PRICE FOR MILK.

For purposes of supporting the price of milk under section 201(d) of the Agricultural Act of 1949, the Secretary of Agriculture may not take into consideration any market value of whey.

SEC. 4. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall not affect any liability of any individual under section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) as in effect before the date of the enactment of this Act.

S. 1777

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Milk Marketing Order Equity Act of 1989".

SEC. 2. MILK MARKETING ORDERS.

Effective January 1, 1990, section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c((5)) reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in subsection (5)—

(A) in the material preceding paragraph (A), by striking "orders" and inserting the following: "the purpose of orders issued pursuant to this section shall be to provide an efficient milk production, processing, and distribution system that minimizes the overall cost of providing fluid milk to consumers, allows for the efficient production and transportation of milk and its products, provides equitable pricing of milk and its products from all sources within and between orders, and prohibits discriminatory pricing or other economic disincentives to the sale of fluid milk at competitive prices in any production area. Orders"; and

(B) in paragraph (A), by striking "Throughout the 2-year period" and all that follows through the end of the paragraph and inserting "Beginning on the date of enactment of the Milk Marketing Order Equity Act of 1989, unless modified by amendment issued after the date of enactment of such Act to the order involved, the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices of the highest use classification under orders that are in effect under this section on the date of enactment of such Act, shall be the minimum aggregate amount of such adjustments on December 23, 1985.";

(2) in subsection (15)—

(A) in paragraph (A), by inserting after "in connection therewith" the following: "(or, in the case of a handler who is subject to a milk order, any milk order, any provision of any such milk order, or any obligation imposed in connection therewith)"; and

(B) in paragraph (B), by inserting after "such handler" the following: "(including a handler subject to any milk order, any provision of any such milk order, or any obligation imposed in connection therewith)"; and

(3) in subsection (17), by striking "as defined in a milk order" and all that follows through "nothing in such proviso" and inserting "or at least 10 percent of all producers covered by milk orders apply in writing or are represented through application by one or more cooperative associations of producers as defined in paragraph (12) for a hearing on a proposed amendment of such order, the Secretary shall call such hearing if the proposed amendment is one that may legally be made to such order. Nothing in the foregoing proviso".

By Mr. HARKIN:

S. 1778. A bill to amend the Higher Education Act of 1965 to reduce the student loan default rate, and for other purposes; to the Committee on Labor and Human Resources.

STUDENT LOAN DEFAULT REDUCTION ACT

● Mr. HARKIN. Mr. President, I rise to introduce the Student Loan Default Reduction Act of 1989.

Mr. President, in the course of this session of Congress, the Appropriations Subcommittee on Labor, Health and Human Services, Education, which I chair, has been required to make many difficult funding choices for fiscal year 1990 between many worthwhile education programs. One area where we did not have a choice is in providing $1.9 billion to cover anticipated student loan defaults.

The dollars that will go to pay for student defaults now represent the third largest education program, smaller only than the Pell Grant Program and the entire Chapter 1 Program. Mr. President, as a Senator who has been a long-time champion of educational opportunity, I view these default costs as a tragic waste. Now, more than ever, we need to recapture these wasted dollars and invest them in education programs that work. Too many deserving students and parents are struggling like never before to piece together the cost of tuition. We need to restore the trust of the American people in the student aid programs. Where I come from, people believe that a 1-percent default rate is 100 percent too high. And when it comes to student loan defaults, they are right. We simply cannot accept the $1.9 billion we will pay for defaults as "the cost of doing business" for our student loan programs.

It is difficult to discuss the default rate problem and a solution to that problem without also discussing and understanding proprietary schools. These schools, which provide specialized career training on a for-profit basis, tend to serve large numbers of the most disadvantaged students. Unfortunately, on average, they have default rates of 36 percent compared to 21 percent for 2-year public schools and 8 percent for 4-year private schools. Another way of viewing this situation is that 57 percent of the

schools with default rates over 20 percent are proprietary schools, and 75 percent of the schools with default rates over 50 percent are proprietary schools.

There are a number of reasons why serious default problems persist at such schools and why monitoring and enforcement are not enough to correct the problem. Recent reports from the New York State Board of Regents suggest that the problems relate to the structure and profit incentives built into the student loan programs. According to the regents, the system creates strong incentives for schools to enroll as many students as possible, often with less regard for whether these students actually complete the program or benefit from it. That is not to say that most proprietary schools are not doing a very good job. There are proprietary schools across the country, many of them in my own State of Iowa, with default rates that should be the envy of many major universities. These schools are providing valuable training that is critical to our economic well-being, often with students who start with many economic and educational disadvantages. Nevertheless, improvements must be made to reduce the unacceptably high default rates, not only at proprietary schools, but at all postsecondary institutions.

Mr. President, the legislation I am introducing today would reduce Federal default costs by over $1.3 billion over the next 5 years. It would do so largely by addressing a number of the major structural incentives that have resulted in high default rates in the past. Some provisions of this legislation have been suggested by the Secretary of Education, Cavazos. Some provisions have been proposed by organizations within the postsecondary education community. In some cases, similar but not identical provisions have been considered in the Senate Labor Committee. Still other provisions have been recommended to me by concerned citizens in my State who work with, and believe in, the student aid programs.

A major feature of this legislation would be to require all students who have not obtained a high school diploma or high school equivalency diploma to pass a test developed by an independent organization approved by the Secretary of Education. Currently, these students may receive Federal student loans to attend schools if they demonstrate the "ability to benefit" from their program to the school's satisfaction. Current law absolutely forbids the Secretary from setting even the most basic minimum standards or promulgating any regulations regarding the "ability to benefit" provision. According to the Education Department's inspector general, to some State licensing bodies, and to other observers, this situation has resulted in many poorly qualified students being admitted to programs and dropping out of them very quickly. There has even been evidence of schools evaluationg students' skills in Spanish for courses that are administered in English. My legislation would require that students be tested by an independent organization and achieve a passing grade prior to enrolling in a trade or academic program.

Mr. President, the Government is not doing students any favors by allowing schools to recruit them for programs they can't complete, and loading them up with Federal loans in the process. The great majority of students who default are students who became quickly disillusioned or dissatisfied with their program. Students who leave their program in its early weeks or months often correctly feel they have received little value and therefore have little incentive to repay their loans. This legislation would address the early dropout situation with two provisions: First, loan disbursement for first-time students would be delayed until 30 days after classes have begun. A second feature would require schools with default rates in excess of 25 percent to implement a pro rata refund policy. This would require the institution to refund a share of tuition fees, room and board, and other charges assessed to the student in increments related to the amount of time the student was enrolled. These refunds would be credited directly to reduce the students Federal loan indebtedness. No student with an outstanding Federal loan will get a refund until their loan is paid off.

Mr. President, a very critical part of this legislation is the imposition of a single statutory definition of "default." I can tell my colleagues that if they were to call any institution in their State and ask them for their default rate, the institutions might well ask them "which rate do you want." When Secretary Cavazos released his default reduction regulations earlier this year, he simultaneously released a list of institutional default rates that have resulted in a great deal of confusion and upset among the Nation's schools. For one school in my State, the Secretary showed a default rate that was five times higher than the rate calculated by the Iowa College Aid Commission.

Mr. President, we need to establish a default rate that accurately accounts for all the players in the student loan system. Institutions are not charged with collecting the great majority of Federal student loans. That responsibility is handled by banks and guarantee agencies. While we will appropriate $1.9 billion this coming year to pay for default costs, we will recoup almost $600 million of that amount through the collection efforts of the banks and the guarantee agencies. With a standard definition that takes into account these loan collection efforts, schools facing Federal penalties will have a strong incentive, to the degree that they are able, to work with those banks and guarantee agencies with the strongest collection records. With this standard and fair default rate definition, I believe that we can be even stricter than the Secretary has proposed in penalizing institutions that do not show success in reducing their excessively high default rates.

Mr. President, this legislation, therefore, would require institutions with default rates of over 25 percent to enter into four year default reduction plans. These plans would be developed after reviews by the Secretary and the accrediting body to best determine the contents of such a plan. If after 4 years, the institution has not reduced its default rate or has a rate in excess of 50 percent, the Secretary would be required to initiate limitation, suspension or termination proceedings against the institution.

Mr. President, three additional features of this legislation will help give institutions additional tools to assist in keeping their default rates low. Section 5 of the legislation would give the institution the authority to refuse to certify a student's eligibility for a loan if the institution determines that the student does not actually demonstrate financial need for the loan. Second, students age 21 and over with bad credit histories would not be given a loan unless there was a credit worthy cosigner on the loan. And third, section 12 of the legislation would create a student loan data system which would keep track of the dollar amount loaned to students and those students who have defaulted. This system would protect against making loans in excess of loan ceilings and would protect against making loans to students who have already defaulted.

Mr. President, section 6 of this legislation would give the Secretary the authority to require all guaranty agencies to participate in the IRS Tax Refund Program. Under this program, taxpayers who are due a refund on their income taxes but who have defaulted on their student loan won't get a refund, they get a notice from the IRS that they have paid a portion of their loan debt and that more is due. This program has been extremely useful in the recovery of defaulted student loan funds but participation by the agencies to date has been voluntary.

Mr. President, the legislation I am introducing today includes several other features and I would ask unanimous consent that a section-by-section analysis of this legislation be printed in the RECORD at the end of my statement.

Mr. President, earlier this year the Senate passed student loan default legislation. The features included in that legislation are useful and I support this legislation which was introduced by Senator PELL, chairman of the Education, Arts, and Humanities Subcommittee of Labor and Human Resources. The legislation I am introducing today adds several additional authorities which I believe are needed in order to solve this problem and to recapture the dollars now wasted on defaults.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1778

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Student Loan Default Reduction Act of 1989".

DEFAULT REDUCTION PLANS

SEC. 2. (a) Part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.,* hereinafter referred to as "the Act") is amended by inserting immediately after section 430A the following new section:

"DEFAULT REDUCTION PLANS

"SEC. 430B. (a) DEFAULT REDUCTION PLANS REQUIRED.—Any institution participating in a program under this part that has a default rate, as defined in subsection (e), in excess of 25 percent shall be considered to be in probationary status with regard to its (b)(2), to implement a default reduction plan approved by the Secretary in accordance with this section.

"(b)(1) LENGTH OF PLAN.—A default reduction plan required by this section shall be four years in duration.

"(2) DEFAULT REVIEWS. Once the Secretary has determined that an institution's default rate is in excess of 25 percent, the Secretary and the appropriate accrediting agency shall each conduct an initial review of the institution to make recommendations regarding the contents of the institution's default reduction plan in accordance with subsection (c). The institution shall then be reviewed by the Secretary and the accrediting agency every two years while the institution remains in probationary status, as described in subsection (a), to determine the institution's progress under the default reduction plan and make further recommendations of actions for the institution to take to correct deficiencies found in the course of such reviews.

"(c) CONTENTS OF PLAN.—A default reduction plan approved by the Secretary may include, but shall not be limited to—

"(1) steps the institution shall take, consistent with applicable State law, to revise its admission policies and screening practices to ensure that its students have a reasonable expectation of succeeding in their programs of study;

"(2) steps the institution shall take, in consultation with the appropriate accrediting body, to seek to reduce its withdrawal rate, and improve its job placement rate and licensing examination pass rate, by improving its educational program;

"(3) steps the institution shall take to contact borrowers more frequently, including contact after a borrower has left the institution, and to conduct entrance and exit interviews explaining the nature of the loan obligation and providing personal financial management counseling;

"(4) steps the institution shall take to provide its students additional or improved support services, including academic counseling and enhanced job placement services;

"(5) steps the institution shall take to collect additional information from borrowers;

"(6) provisions requiring that the institutional verification required by section 484(f) on student loan eligibility be increased up to 100 percent of such verification; and

"(7) other measures designed to increase the collection of student loans that are appropriate to the circumstances of the institution implementing the default reduction plan.

"(d) LIMITATION, SUSPENSION, OR TERMINATION.—

(1) REFUSAL TO ENTER INTO PLAN.—If an institution that is required under subsection (a) to enter into a default reduction plan approved by the Secretary refuses to do so, or unreasonably delays the implementation of its default reduction plan, the Secretary may initiate limitation, suspension, or termination proceedings against the institution under section 487(c)(1)(D) with respect to the institution's eligibility to participate in programs under this part.

"(2) FAILURE TO REDUCE DEFAULT RATE.—(A) If, by the end of the fourth year of its default reduction plan, the Secretary determines that an institution has not achieved a reduction in its default rate, as measured from the start of the plan, or that the institution's default rate exceeds 50 percent, the Secretary shall initiate limitation, suspension, or termination proceedings against the institution under section 487(c)(1)(D) with respect to the institution's eligibility to participate in programs under this part, unless the institution demonstrates to the satisfaction of the Secretary that its default rate is substantially due to circumstances beyond its control.".

"(e) DEFAULT RATE.—(1) For purposes of this section, the default rate of an institution for any fiscal year in which 30 or more current and former students at the institution enter repayment on loans made, insured or guaranteed in accordance with section 427, 428, or 428A shall be expressed as the percentage of the current and former students who enter repayment in that fiscal year on such loans received for attendance at that institution who default before the end of the second subsequent fiscal year, except that any such students—

(A) who default and return to repayment status before the end of such subsequent fiscal year, by making at least the last two payments in the last quarter of such second subsequent fiscal year, shall not be considered in default for purposes of calculating the default rate under this subsection; and

(B) who are in a period of deferment or forbearance as of the end of such second subsequent fiscal year shall not be included in calculating the default rate under this section for the first full fiscal year following the date of enactment of this section and succeeding fiscal years.

"(2) The default rate of an institution for any fiscal year in which less than 30 current and former students at the institution enter repayment on loans made, insured or guaranteed in accordance with section 427, 428, or 428A shall be calculated in the manner described in paragraph (1), except that the percentage determined under paragraph (1) for such fiscal year shall be averaged with the percentages calculated in accordance with paragraph (1) for the two subsequent fiscal years to determine such institution's default rate.

"(3) In the case of a student who has attended and borrowed to attend more than one institution, the student and his or her subsequent repayment or default shall be attributed to each institution for attendance at which the student received a loan that entered repayment in such fiscal year.

"(4) A loan on which a payment is made by the institution, its owner, agent, contractor, employees, or any other affiliated entity or individual, in order to avoid default by the borrower, shall be considered to be in default for purposes of this section.

"(5) Whenever the Secretary determines that satisfactory data is unavailable, the Secretary shall make estimates, consistent with the provisions of this subsection, needed to carry out the provisions of this subsection.

DELAYED LOAN DISBURSEMENT

SEC. 3. Section 487(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(11) In the case of an institution participating in a program under part B that is operating under a default reduction plan in accordance with section 430B, the institution shall not disburse a loan made, insured, or guaranteed under section 427, 428, or 428A that is made to a borrower in his or her first period of enrollment at the institution prior to 30 days after classes have begun for the period of enrollment for which the loan is obtained.".

CREDIT CHECKS; CO-SIGNERS

SEC. 4. (a) Section 427(a)(2)(A) of the Act is amended to read as follows:

"(A) is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under the provisions of this part, a lender shall obtain a credit report on any loan applicant who will be at least 21 years of age as of July 1 of the academic year for which assistance is being sought, from at least one national credit bureau organization, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report, and an applicant who, in the judgment of the lender in accordance with the regulations of the Secretary, has a negative credit history shall be required to obtain a credit-worthy co-signer in order to obtain the loan, provided that for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be a negative credit history;".

(b) Section 428(b)(1)(N) of the Act is amended—

(1) by inserting "(i)" immediately following the subparagraph designation; and

(2) by adding at the end thereof "and" and the following new clause:

"(ii) provides that, prior to making a loan made, insured, or guaranteed under this part (other than a loan made in accordance with section 428C), a lender shall obtain a credit report on any loan applicant who will be at least 21 years of age as of July 1 of the academic year for which assistance is being sought, from at least one national credit bureau organization, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report, and an applicant who, in the judgment of the lender in accordance with the regulations of the Secretary, has a negative credit history shall be required to obtain a credit-worthy co-signer in order to obtain the loan, provided that

for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be a negative credit history;".

(c) Section 428(a) of the Act is amended by striking out paragraph (6).

CERTIFICATION OF ELIGIBILITY

SEC. 5. Section 428(a)(2)(D) of the Act is amended to read as follows:

"(D) An eligible institution, in carrying out the provisions of subparagraph (A) and (B)—

"(i) shall not provide a statement which certifies the eligibility of any student to receive any loan under this part in excess of the maximum amount applicable to such loan; and

"(ii) may, on the basis of adequate documentation and notwithstanding a determination of need under part F of this title, certify the eligibility of any student to receive a loan under this part in a lesser amount, or refuse to certify the eligibility of the student for a loan, if the institution determines that the student does not demonstrate financial need for a loan under this part in an amount determined under part F of this title.".

GUARANTY AGENCY PARTICIPATION IN TAX REFUND OFFSET PROGRAM

SEC. 6. Section 428(c)(8) of the Act is amended—

(1) in the heading, by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "TAX REFUND OFFSETS.";

(2) by inserting the subparagraph designation "(A)" immediately preceding "If the Secretary"; and

(3) by adding at the end thereof the following new subparagraph:

"(B) A guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection if the Secretary determines it is appropriate to refer the loan for offset to the Secretary of the Treasury under the tax refund offset procedures authorized by 31 U.S.C. 3720A.".

EMERGENCY ACTIONS

SEC. 7. (a) Section 432 of the Act is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting immediately following subsection (h) the following new subsection:

"(i) AUTHORITY OF THE SECRETARY TO TAKE EMERGENCY ACTIONS AGAINST LENDERS.—

(1) IMPOSITION OF SANCTIONS.—If the Secretary—

"(A) receives information, determined by the Secretary to be reliable, that the lender is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation;

"(B) determines that immediate action is necessary to prevent misuse of Federal funds; and

"(C) determines that the likelihood of loss outweighs the importance of following the limitation, suspension, or termination procedures authorized in subsection (h), the Secretary shall, effective on the date on which notice of the action is mailed to the lender, take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to a lender.

"(2) LENGTH OF EMERGENCY ACTION.—An emergency action under this subsection may not exceed 30 days unless a limitation, suspension, or termination proceeding is begun against the lender under subsection (h) before the expiration of that period.

"(3) OPPORTUNITY TO SHOW CAUSE.—The Secretary shall provide the lender, if it so requests, an opportunity to show cause that the emergency action is unwarranted.".

(b) Section 487(c)(1) of the Act is amended—

(1) in subparagraph (C), by striking out "and" at the end thereof;

(2) in subparagraph (D), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(E) an emergency action against an institution, under which the Secretary shall, effective on the date on which notice of the action is mailed to the institution, withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this title, if the Secretary (i) receives information, determined by the Secretary to be reliable, that the institution is violating any provisions of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, (ii) determines that immediate action is necessary to prevent misuse of Federal funds, and (iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination, except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted.".

SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION

SEC. 8. (a) Section 481 of the Act is amended by adding at the end thereof the following new subsection:

"(e) SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION.—The Secretary, a guaranty agency, an accrediting agency, or a State licensing body may provide any information in its possession that is relevant to an institution's eligibility to participate in programs under this title to another such entity, either on its own initiative, or upon the request of the other such entity.".

(b) Section 487(a) of the Act (as amended by section 3) is further amended by adding at the end thereof the following new subsection:

"(12) The institution will acknowledge the authority of the Secretary, guaranty agencies, accrediting agencies, and State licensing bodies under section 481(e) to share with other such entities information pertaining to the institution's eligibility to participate in programs under this title.".

BRANCH CAMPUS ELIGIBILITY

SEC. 9. Section 481 of the Act (as amended by section 7) is further amended by adding at the end thereof the following new subsection:

"(f) BRANCH CAMPUS ELIGIBILITY.—No later than 240 days after the date of enactment of this Act, the Secretary shall publish proposed regulations concerning the accreditation and eligibility of branch campuses of an eligible institution, and such regulations shall include a prohibition against the establishment of branch campuses which circumvents established procedures concerning accreditation and institutional eligibility to participate in programs under this title.".

ABILITY TO BENEFIT

SEC. 10. (a) Section 484(d) of the Act is amended to read as follows:

"(d) ABILITY TO BENEFIT.—(1) in order for a student who is admitted on the basis of the ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass a test developed, administered, and graded by one or more independent organizations in accordance with paragraph (3).

"(2) For purposes of paragraph (1), independent organizations may include, but are not limited to, State agencies and private national or regional organizations, except that an organization that includes one or more institutions of higher education or vocational schools, or their officers or owners, as members shall not be eligible. An organization is eligible to develop, administer, and grade tests for purposes of this section only upon a determination by the Secretary that the organization is independent of the institutions that would be using such tests to determine the ability of their prospective students to benefit from the education or training offered by the institution.

"(3)(A) Any test developed for purposes of this subsection shall measure the student's ability to complete successfully the course of study for which the student has applied for admission. More than one test may be developed for purposes of this subsection in order to measure appropriately a student's ability to complete a particular type of educational program.

"(B)(i) The appropriate accrediting agency shall establish the passing score on any test developed in accordance with subparagraph (A) for any educational program for which the test is used.

"(ii) Notwithstanding clause (i), if the Secretary determines that students who achieved passing scores on any test developed for purposes of this subsection are not achieving substantially the same graduation, job placement, or State licensing examination pass rates as students attending the same institutions who received their high school diplomas (or its recognized equivalent) prior to admission to such institutions, the Secretary is authorized to—

"(I) establish a different passing score, or require a different accrediting agency to establish the passing score on such tests;

"(II) consider this information in reevaluating the recognition by the Secretary of the agency that established the passing score as a reliable authority as to the quality of training offered by the institutions it accredits; and

"(III) require that a different test, developed by another independent organization, be administered to students seeking admission at that institution.

"(4) Notwithstanding paragraph (1), a student who is enrolled in an elementary or a secondary school shall not be eligible for assistance under this title.".

(b) Section 481(b) of the Act is amended in the fourth sentence by striking out "shall not promulgate regulations defining the admissions procedures or remediation programs that must be used by an institution in admitting students on the basis of their ability to benefit from the training offered and".

(c) Section 487(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(11) In the case of an institution that admits students on the basis of ability to

benefit from the training offered, the institution shall provide the Secretary with the information necessary for the Secretary to make the determination described in section 484(d)(3)(B)(ii).".

TUITION REFUNDS

SEC. 11. Section 485(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) For purposes of paragraph (1)(F), tuition, fees, room and board, and other charges assessed the student by an institution with a default rate, as defined in Section 430B(e) in excess of 25 percent, shall be considered to be earned by that institution in increments (which shall not be greater than 10 percent) of the enrollment period for which the student has been charged that have elapsed at the time the student withdraws, and the institution shall provide a refund for the portion of the period of enrollment for which the student has been charged that remains (in such increments), except that—

"(i) in the case of a student who withdraws before completion of 10 percent of the enrollment period, the institution may consider 10 percent of the amount of charges assessed for the enrollment period for which the student has been charged to have been earned by the institution, in addition to any amount considered earned under clause (iii);

"(ii) in the case of a student who withdraws on or after completion of 50 percent of the enrollment period, the institution may, under its refund policy, consider the full amount of charges assessed for the enrollment period for which the student has been charged to have been earned by the institution; and

"(iii) the institution shall be considered to have earned its initial administrative expenses, as defined in accordance with the regulations of the Secretary, at the beginning of the enrollment period for which the student has been charged.

"(B) For purposes of subparagraph (A), the portion of the period of enrollment for which the student has been charged that remains shall be determined—

"(i) in the case of a program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

"(ii) in the case of a program that is measured in clock hours, by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

"(iii) in the case of a correspondence program, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

"(C) An institution may require that the equipment issued to the student by the institution that the institution would reissue to another student be returned by a student once the institution determines that the borrower has withdrawn, if the institution makes a written request for that return that is received by the student within 10 days of that determination. If the institution notifed the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the institution may deduct from the refund owed under this paragraph the documented cost to the institution of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the institution. However, the institution may not delay its payment, in accordance with regulations, of a refund to a lender by reason of this process."

"(D) For purposes of this paragraph, refunds shall be credited against grant, loan, or work assistance awarded under this title in the following order:

"(i) outstanding balances on loans made, insured, or guaranteed in accordance with part B, including origination fees for such loans;

"(ii) outstanding balances on loans made in accordance with part E; and

"(iii) any other grant, loan, or work assistance awarded under this title.".

NATIONAL STUDENT LOAN DATA SYSTEM

SEC. 12. Section 485B(c) of the Act is amended to read as follows:

"(c) VERIFICATION REQUIRED.—(1) With respect to the making, guaranteeing, or certifying of loans under part B or part E of this title for periods of instruction beginning on or after July 1, 1991, the Secretary shall conduct a demonstration project of not less than one academic year in length with lenders, guaranty agencies and institutions of higher education to examine the feasibility and cost-effectiveness of requiring lenders, guaranty agencies, and institutions of higher education to verify information and obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing or certifying such loans.

"(2) Upon satisfactory completion of the demonstration project authorized under paragraph (1), the Secretary shall require all lenders, guaranty agencies, and institutions of higher education to verify information and obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing or certifying loans under part B or part E of this title.".

CONSUMER INFORMATION

SEC. 13. Section 487(a)(8) of the Act is amended—

(1) by inserting the subparagraph designation "(A)" immediately following the paragraph designation;

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(B) in the case of an institution that offers undergraduate nonbaccalaureate vocational training programs designed to prepare students for a particular vocational, trade, or career field, the institution shall, in accordance with the regulations of the Secretary, publish and make available to prospective students, at or before the time of application or the signing of a contract with the institution, the most recent available data concerning the institution's retention and graduation statistics and job placement rates in the field for which the training is provided, and, if applicable, the relevant State licensing requirements and the pass rate of the institution's graduates on relevant State licensing examinations.".

CRIMINAL PENALTIES

SEC. 14. Section 490(a) of the Act is amended by inserting a comma and "or attempts to so embezzle, misapply, steal, or obtain, or causes another person to so embezzle, misapply, steal, or obtain," immediately following "under this title".

EFFECTIVE DATES

SEC. 15. (a) The amendments made by sections 2, 7, 9, 12, and 14 shall be effective upon enactment.

(b) The amendments made by sections 3 and 4 shall be effective for loans made, insured, or guaranteed in accordance with section 427, 428, 428A, or 428B of the Act on or after the date of enactment of this Act to cover periods of instruction beginning on or after July 1, 1990.

(c) The amendments made by sections 5, 6, 8, and 11 shall be effective 90 days after enactment of this Act.

(d) The amendments made by section 10 shall be effective for grant, loan, or work assistance awarded for periods of enrollment beginning on or after July 1, 1991.

(e) The amendments made by section 13 shall be effective for institutional participation in programs under title IV of the Act for periods of enrollment beginning on or after July 1, 1990.

THE STUDENT LOAN DEFAULT REDUCTION ACT OF 1989

SECTION-BY-SECTION ANALYSIS

Section 2. Section 2 of the bill would add a new section 430B to part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*, hereinafter referred to as "the Act") that would state that an institution participating in the Stafford Student Loan Program that has a default rate in excess of 25 percent would be considered to be in probationary status in regard to its eligibility to participate in this program and required to enter into a default reduction plan approved by the Secretary.

The default reduction plan would be four years in length. The Secretary and the appropriate accrediting body would conduct a default review of the institution at the outset of the plan. These initial reviews by the Secretary and the accrediting body would determine the contents of the default reduction plan, which would include measures described in proposed section 430B(c) of the Act. Both the Secretary and the appropriate accrediting body would then review the institution every two years while the institution remains in probationary status to determine the institution's progress under the default reduction plan and make further recommendations.

In the fourth year of the plan, the Secretary would review the institution's actions taken under the plan and in response to the Secretary's and the accrediting agency's subsequent reviews. If the Institution's default rate has not been reduced by the end of the fourth year of the plan, or remains above 50 percent, the Secretary shall initiate limitation, suspension, or termination proceedings against the institution, unless the institution demonstrates to the satisfaction of the Secretary that its default rate is substantially due to circumstances beyond its control.

These default reduction plans would impose greater institutional accountability in reducing student loan defaults that may stem from institutional management problems, but would provide adequate safeguards as well as appropriate sanctions. An institution operating under a default reduction plan would be given assistance in developing a plan appropriate to its particular circumstances, and would be monitored closely by the Secretary and the appropri-

ate accrediting agency. If the institution still cannot reduce its default rate sufficiently, the institution still would have the opportunity to demonstrate to the Secretary that its default rate is due to circumstances beyond its control.

Proposed section 430B(e) of the Act would place the default rate applicable for purposes of the default reduction plans in statute, as opposed to relying on a regulatory definition. The default rate would, in general, be calculated based on the percentage of student borrowers of Stafford loans and Supplemental Loans for Students who attended that institution and who default on their loans in the fiscal year in which they enter repayment and the following two fiscal years. Any student borrower who defaults, but subsequently returns to repayment status within that time (by making at least two payments in the last quarter of the final fiscal year in the calculation), would not be considered to be in default for purposes of this calculation, but someone affiliated with the institution could not make payments on a student borrower's loan to avoid the inclusion of the loan in the default rate calculation as a default. The default rate of institutions with smaller numbers of borrowers entering repayment in a given fiscal year would be determined by averaging the percentages calculated for a fiscal year and the two subsequent fiscal years.

Section 3. Section 3 of the bill would amend section 487(a) of the Act to prohibit an institution operating under a default reduction plan (as proposed in section 2 of the bill) from disbursing a Stafford Loan or a Supplemental Loan for Students (SLS loan) to borrower who is in his or her first period of instruction at the institution until 30 days after classes have begun. Students who either fail to attend any classes or who drop out very early in the term very frequently default on their student loans, and this amendment would help minimize this type of default.

Section 4. Section 4 of the bill would amend sections 427(a)(2)(A) and 428(b)(1)(N) of the Act to require that all applicants for Stafford, SLS, and PLUS loans who are age 21 and older undergo credit checks, and that applicants who, in the judgment of the lender (subject to regulatory standards prescribed by the Secretary), have negative credit histories shall be required to obtain a credit-worthy co-signer in order to receive the loan. Lenders would be authorized to charge applicants up to $25 or the actual cost of obtaining the credit report, whichever is less, to defray the cost of the credit checks. Students with very little or no credit history, which would be the majority of applicants, would not be required to have a co-signer, and, consequently, their access to financial assistance and to postsecondary education, would not be limited. By requiring credit checks only of applicants who are at least age 21, this amendment would be more cost-effective than requiring credit checks of all loan applicants, because the students who are least likely to have a credit history would not have to pay for a needless credit check, and the lenders' burden would be minimized. This amendment is targeted at only those loan applicants who have already demonstrated their lack of credit-worthiness, and would reduce defaults by requiring that a financially responsible individual, whether it is the student or the student's co-signer, stand behind the student's loan obligation. A conforming change would be made to section 428(a) of the Act as well.

Section 5. Section 5 of the bill would amend section 428(a)((2)(D) of the Act to permit an institution to certify the student's eligibility for a lesser loan amount under part B of title IV of the Act, or to refuse to certify a student's eligibility for a loan under part B altogether, if the institution determines that, despite a determination of need calculated in accordance with the need analysis provisions of part F of title IV of the Act, the student actually does not demonstrate financial need for the loan. The institution would also be required to provide adequate documentation of the refusal to certify the student's eligibility, or of the certification of a lesser loan amount. The institution may be aware of aspects of the student's financial circumstances that are not reflected in the need analysis calculation.

Section 6. Section 6 of the bill would amend section 428(c)(8) of the Act to require a guaranty agency to assign to the Secretary any defaulted loans that it holds, if the Secretary determines that it would be appropriate to refer those loans to the Secretary of the Treasury for offset under the Tax Refund Offset Program authorized by 37 U.S.C. 3720A. The Secretary would still retain the discretion not to require assignment if tax refund offset would not be the appropriate collection method to use on a particular loan. This program has been extremely useful in the recovery of defaulted student loan funds, but guaranty agency participation in the offset program is only optional at present; by requiring assignment of defaulted student loans for offset, even greater recoveries of funds can be expected.

Section 7. Section 7 of the bill would amend sections 432 and 487(c)(1) of the Act to clarify the Secretary's authority to take emergency actions against participating lenders and institutions. In an emergency action, the Secretary withholds funds from a lender or an institution stops the issuance of guarantee commitments on loans made by a lender; and withdraws the institution's authority to obligate title IV funds for up to 30 days (or longer, if limitation, suspension, or termination proceedings are initiated) in situations where the Secretary has learned that the lender or institution has violated applicable laws, regulations, or agreements; determines that immediate action is necessary to prevent the misuse of Federal funds; and determines that the likelihood of loss outweighs the importance of following limitation, suspension, or termination proceedings.

The Secretary has exercised his inherent authority to take emergency actions for many years, and considers this authority essential to his ability to respond quickly to the known misuse of Federal funds. However, the Secretary's emergency action authority has been challenged successfully in recent litigation. Specifically, in *Ross University School of Medicine* v. *Cavazos*, No. 89-0985-06 (D.D.C. 1989), a United States District Court ruled that the Secretary's emergency action mechanism is unauthorized by current statute or any other authority. Without such authority, lenders and institutions against which the Secretary has initiated limitation, suspension, or termination proceedings would have less incentive to resolve the proceedings quickly—the institution or lender could continue to receive Federal funds throughout the course of protracted legal proceedings, despite the Secretary's knowledge that the institution or lender is misusing Federal funds.

Section 8. Section 8 of the bill would amend section 481 of the Act to permit explicitly the voluntary sharing of information relating to an institution's eligibility to participate in title IV programs among the Secretary, guaranty agencies, accrediting agencies, and State licensing bodies, and would amend section 487(a) of the Act to require that institutions acknowledge, as part of their program participation agreements, the right of these entities to share this information. There is great reluctance among some of these entities to share relevant information regarding an institution for fear of being sued by the institution over the disclosure. This reluctance makes it difficult for these entities to learn about actions on the part of one entity, for example, an accrediting agency, that may have an impact on the actions of other such entities in dealing with a particular institution. This diminished flow of important information impedes the process of correcting problems at an institution, which may result in the wasting of Federal student assistance and the aggravation of the default problem.

Section 9. Section 9 of the bill would require the Secretary to promulgate regulations concerning the accreditation and eligibility of branch campuses of an eligible institution. Branch campuses are sometimes established by unscrupulous school operators to circumvent established procedures for accreditation and title IV eligibility, and the Secretary would be required to prohibit this practice in regulations, as well as address other areas of potential abuse in the establishment of branch campuses.

Section 10. Section 10 of the bill would amend the ability to benefit student eligibility criterion in section 484(d) of the Act. Current law requires that a student who is admitted on the basis of the ability to benefit from the education or training offered must, in order to remain eligible for assistance, (1) receive a General Education Diploma, (2) be counseled and complete an institutionally prescribed remedial education course, or (3) take a standardized test, and pass it or take the institutionally prescribed remedial education course. Unfortunately, these requirements have been insufficient to eliminate abuse of the "ability to benefit" criterion.

Section 10 of the bill would amend section 484(d) of the Act to require that, in order to receive Federal student financial aid, any student admitted on the basis of ability to benefit must, prior to enrollment, pass a test developed, administered, and graded by an independent organization. The Secretary would determine that the organization is truly independent of the institutions that would be using the test to establish their students' ability to benefit.

The test would measure the student's ability to complete successfully the course of study for which the student has applied for admission. Requiring that a student pass a test in order to obtain Federal student financial assistance would significantly reduce the abuse of the ability to benefit criterion by limiting institutions' ability to enroll inadequately prepared students in order to increase the Federal funds flowing to the institution. More than one test could be developed for purposes of this provision in order to measure appropriately a student's ability to complete a particular type of educational program.

The appropriate accrediting agency would determine what constitutes a passing score on the test. However, if the Secretary determines that students who achieved passing scores on the test are not achieving substantially the same graduation, job placement,

or State licensing examination pass rates as students attending the same institutions who received their high school diplomas or GEDs prior to admission to such institutions, the Secretary may establish a different passing score, require a different accrediting agency to establish the passing score on the test, or require that a different test be administered to students seeking admission at that institution. The Secretary could also consider this information in re-evaluating the recognition by the Secretary of the agency that established the passing score as a reliable authority as to the quality of training offered by the institutions it accredits. These amendments would enable the Secretary to ensure that the testing process is objective and that the test truly measures students' ability to benefit from the training offered.

Section 10 of the bill would also make a minor conforming amendment to section 481(d) of the Act to eliminate the prohibition against the Secretary promulgating regulations defining the admissions procedures or remediation programs that must be used by an institution in admitting ability-to-benefit students. This prohibition would no longer be relevant to the terms of section 484(d) of the Act as amended by this section of the bill.

Section 11. Section 11 of the bill would amend section 485(a) of the Act to require that any institution with a default rate (as defined in proposed section 430B(e) of the Act) in excess of 25 percent implement a refund policy that would require the institution to refund a share of tuition fees, room and board, and other charges assessed the student by the institution, in increments related to the amount of time remaining in the enrollment period at the time the student withdraws. Section 10 of the bill would specify how the amount of time remaining in the enrollment period would be calculated for programs measured in credit hours and clock hours and for correspondence programs. If a student withdraws after completing at least 50 percent of the period of enrollment, the institution would be permitted to retain the full amount charged for the enrollment period. The institution would also be permitted to retain its initial administrative expenses, as defined in regulations. A refund would be credited against title IV assistance awarded to the student with Stafford Loans being credited first, followed in order by Perkins Loans and other title IV assistance. These amendments would help to minimize the problem of defaults by students who drop out near the beginning of a program of study.

Section 12. Section 12 of the bill would amend section 485B(c) of the Act to require the Secretary to conduct a demonstration project to examine the feasibility and cost-effectiveness of requiring lenders, guaranty agencies, and institutions of higher education to verify information and obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing or certifying loans. Upon satisfactory completion of the demonstration project, the Secretary would require the use of the Data System for such verification, which is prohibited under current section 485B(c) of the Act. The use of the system as a verification tool could save taxpayers millions of dollars annually in erroneously awarded student assistance by providing an effective means of enforcing loan limits and the prohibitions that are in current law against the providing of further aid to loan defaulters.

Section 13. Section 13 of the bill would amend section 487(a)(8) of the Act to require that an institution that offers undergraduate nonbaccalaureate vocational training programs designed to prepare students for a particular career field must publish and make available to prospective students the most recent available data concerning its retention and graduation statistics, job placement rates in the field for which the training is provided, the relevant State licensing requirements and the pass rate of the institution's graduates on relevant State licensing examinations. If students were more informed, they would be better equipped to select an appropriate educational program, and less likely to drop out (and default on their student loans) because the programs failed to meet their expectations. Similarly, students who are aware of an institution's job placement rate and State licensing examination pass rate would have a better idea of their employability after graduation, and, consequently, their ability to repay their student loans.

Section 14. Section 14 of the bill would amend section 490(a) of the Act to authorize the imposition of criminal penalties for attempted fraud, embezzlement, theft, or misapplication of title IV funds, or for causing another person to commit these offenses. The imposition of a criminal penalty should not depend on whether an individual actually commits one of the offenses described, simply attempts to do, or causes another person to commit such an offense. With this amendment, section 490 of the Act would have greater impact on those who would consider defrauding the Government, and the taxpayer, of title IV funds.

Section 15. Section 15 of the bill would provide the effective dates for the amendments made by the bill.●

By Mr. BENTSEN (for himself, Mr. DIXON, Mr. SIMON, Mr. METZENBAUM, and Mr. HEFLIN):

S. 1779. A bill to change the tariff treatment of certain brooms wholly or in part of broom corn; to the Committee on Finance.

TARIFF TREATMENT OF CERTAIN BROOMS

● Mr. BENTSEN. Mr. President, today I introduce a bill to correct an inadvertent change in the tariff treatment of brooms, made in part of broom corn, occasioned by the changeover to the harmonized tariff schedule [HTS]. This bill would cause brooms in essential character of vegetable materials or twigs and containing broom corn to be classified in subheadings 9603.10.10 through 9603.10.60 rather than 9603.70. In so doing, it would restore the tariff treatment these brooms received before the implementation of the HTS. Enactment of this bill would not result in revenue loss.

Due to its traditional practice of employing handicapped people, the broom manufacturing industry has been favored since 1965 by a tariff rate quota. The current quota allows up to 121,478 dozen imported brooms made of broom corn and valued at no more than 96 cents to enter at 8 percent duty; brooms of 96 cents or less in value which exceed the quota are to be assessed 32 cents each, while brooms valued above 96 cents are subject to a 32-percent duty.

The current concern among broom manufacturers stems from the deletion of the words "wholly or in part" from the tariff schedules when the United States implemented the harmonized tariff schedule. The omission of these words resulted in a recent Customs ruling stating that brooms not in essential character of broom corn are not broom corn brooms and, therefore, not classifiable under the subheading which would make them subject to the quota and higher tariff rates. If allowed to stand, this ruling may result in a substantial increase in the number of brooms entering the country at a substantially lower duty rate or duty-free. Major revision of this tariff and quota, if desirable, should be the result of negotiation with our trading partners, not of a unilateral U.S. tariff concession based on an omission.

In sum, Mr. President, I am offering this legislation to correct the inadvertent omission of four words. I am pleased to state that Senators DIXON, SIMON, METZENBAUM, and HEFLIN are cosponsors of this bill. I ask unanimous consent that a copy of the bill be printed following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BROOMS.

Chapter 96 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) is amended—

(1) by inserting "wholly or in part" after "Whiskbrooms," in the superior article description for subheading 9603.10.10; and

(2) by inserting "wholly or in part" after "brooms," in the superior article description for subheading 9603.10.40.

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date of enactment of this Act.●

By Mr. DOLE (for Mr. WILSON):

S.J. Res. 217. Joint resolution to designate the period commencing February 4, 1990, and ending February 10, 1990, as "National Burn Awareness Week"; to the Committee on the Judiciary.

NATIONAL BURN AWARENESS WEEK

● Mr. WILSON. Mr. President, I rise today to address a serious problem little noticed in America—except by those who are its victims. I am referring to those persons who are tragically injured in fires, an alarming number of whom are children and older Americans.

To help prevent these injuries, I am introducing a joint resolution designating the week of February 4, 1990, as

"National Burn Awareness Week." This resolution is essential for public awareness in the prevention and treatment of burn victims.

The United States has the worst burn injury problem of any industrialized country. Each year, over 2 million individuals are victims of burn injuries, approximately half of whom are children.

Seventy thousand of these individuals are hospitalized and another 6,000 die from the results of the burns, making burn injuries one of the leading causes of accidental death in the United States.

The survivors of burn injuries must undergo very costly and lengthy medical treatments, and are often subject to deep psychological scars as a result of the ordeal.

One of the most frustrating aspects of these injuries and fatalities, is that so many of the accidents need never have occurred. The majority of these accidents are the result of carelessness or lack of education. Approximately 75 percent of these injuries could have been prevented or minimized by very basic education in burn hazard awareness, prevention, and response to crisis situations.

Executing the "stop, drop, and roll" procedure, for example, can mean the difference between a minor injury and a fatal one. Consider the children that are found every year in the closet, or under the bed, of a house that burned down. In each instance, a life might have been saved by teaching the child that one cannot hide from fire.

While much of this information may appear to be fundamental, America's burn death and injury problem is evidence that this information is not common knowledge. By promoting public awareness and understanding about burns, this resolution provides Congress with an opportunity to make an impact on this very serious problem.

Educating the public to the needless tragedy of burn injuries requires continuing and expanding the efforts already underway. It is my hope that this resolution will help raise public consciousness and for the fifth consecutive year the second week in February will be called "National Burn Awareness Week."

I urge my colleagues to support this joint resolution by cosponsoring the establishment of "National Burn Awareness Week."

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 217

Whereas the burn problem in the United States is one of the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States today;

Whereas every year over 2,000,000 people are victims of some form of burn injury in the United States alone, and children account for between one-third and one-half of this total;

Whereas of these injuries, over 70,000 are hospitalized and account for 9,000,000 disability days and $100,000,000 in costs annually;

Whereas over 6,000 people die from burn injuries annually, and the rehabilitative and psychological impact of burns is devastating;

Whereas young children are in the highest risk group suffering from hot liquid burns and injuries caused by child fire play and fire setting;

Whereas older adults and the disabled are also at great risk and extremely susceptible to burn injuries;

Whereas burn survivors often face years of costly reconstructive surgery and extensive physical and psychological rehabilitation in overcoming disabilities and fears of rejection by family members, friends, coworkers, schoolmates, and the public in general;

Whereas it is estimated that approximately 75 percent of all burn injuries and deaths could be prevented by a comprehensive national educational and awareness campaign and by changes in the design and technology of homes and consumer products;

Whereas a general public awareness of the need for smoke detectors and home fire escape plans, in combination with an understanding of the risk associated with items in the home environment, can cause a reduction of injuries and loss of life; and

Whereas there is a need for an effective national program that deals with all aspects of burn injuries and on the prevention thereof: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing February 4, 1990, and ending February 10, 1990, is designated as "National Burn Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe that week with appropriate programs and activities.●

By Mr. INOUYE (for himself, Mr. ADAMS, Mr. BINGAMAN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. BURNS, Mr. COCHRAN, Mr. CONRAD, Mr. CRANSTON, Mr. DASCHLE, Mr. DECONCINI, Mr. DODD, Mr. DOMENICI, Mr. GARN, Mr. GORTON, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mr. LUGAR, Mr. MACK, Mr. MATSUNAGA, Mr. MCCAIN, Mr. MCCLURE, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NUNN, Mr. PACKWOOD, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SASSER, Mr. SHELBY, and Mr. WIRTH):

S.J. Res. 218. Joint resolution to designate the week of December 3, 1989, through December 9, 1989, as "National American Indian Heritage Week"; to the Committee on the Judiciary.

NATIONAL AMERICAN INDIAN HERITAGE WEEK

Mr. INOUYE. Mr. President, I am pleased to introduce a Senate joint resolution designating the week of December 3 to 9, 1989, as the "National American Indian Heritage Week."

For the past 3 years, the Congress has designated a week to recognize the rich cultural heritage of native Americans in the United States and the significant contributions they have made to American society.

During this celebration week, tribes, organizations, communities, educators, and certain Federal agencies observe the American Indian Heritage Week. Activities are planned focusing on native American culture, religion, history, language, and art.

At schools across the country, native American speakers, artists, dancers, crafts people, and Indian elders share their skills and knowledge with the younger generations of Indians and non-Indians. For the Indian students the positive benefits are enhanced self-esteem, pride, and self-awareness. For the non-Indian students, this week fosters an appreciation of the culture and heritage of their Indian friends.

The week designated is during a time when fall harvest ceremonies are conducted in Indian communities to give thanks for a good year's crop.

Mr. President, it is a little known fact that this country's democratic form of government had its origins in the governmental organization of the Iroquois Confederacy, or that without the assistance of the Indian nations, the Revolutionary War would not have been won, and this Nation would still be a colony of England. History records only as a footnote that it was the Indian people who kept General Washington's troops alive over the winter in Valley Forge.

What is more commonly known are the magnificent contributions native Americans have made to the art, music, dance, and fundamental values of this country. Their significant cultural legacy is unequaled in American society, and their contemporary contributions are significant.

Mr. President, I believe that this Nation's first Americans—who protected and cared for the lands that now form the United States in a manner that no custodian since have ever done—and whose culture and traditions and values are alive and well and flourishing deserve the greatest honor. It is, I believe, appropriate, that this week be designated as American Indian Heritage Week so that we might all remember our origins, and how much we owe to the American Indian people.

By Mr. MITCHELL (by request):

S.J. Res. 219. Joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergen-

cy Deficit Control Act of 1985, as amended; to the Committee on Appropriations.

AFFIRMING CHANGES IN OUTLAY REDUCTIONS WITHIN THE DEFENSE MAJOR FUNCTION CATEGORY

Mr. MITCHELL. Mr. President, I introduce, at the request of the President, a joint resolution affirming changes in the outlay reductions ordered by the President within the defense major functional category.

To the extent that the President's request complies with the Gramm-Rudman-Hollings law, that law requires the majority leader to introduce this joint resolution. I do so today reserving judgment as to whether the report submitted by the President complies with the requirements for that report set forth in section 252(c)(2) of that law, and I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 219

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the report of the President as submitted on October 19, 1989, under section 252(c)(2)(C)(i) is hereby approved.

ADDITIONAL COSPONSORS

S. 350

At the request of Mr. LOTT, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 350, a bill to repeal section 89 of the Internal Revenue Code of 1986 (relating to rules for coverage and benefits under certain employee benefit plans).

S. 562

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 562, a bill to amend the Social Security Act to provide for improvements in services to applicants and beneficiaries under the old-age, survivors, and disability insurance program and the supplemental security income program.

S. 856

At the request of Mr. MURKOWSKI, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 856, a bill to amend title 13 United States Code and the International Investment and Trade in Services Survey Act to improve the quality of data on foreign investment in the United States.

S. 1277

At the request of Mr. FORD, the names of the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of S. 1277, a bill to amend the Federal Aviation Act of 1958 to prohibit the acquisition of a controlling interest in an air carrier unless the Secretary of Transportation has made certain determinations concerning the effect of such acquisition on aviation safety.

S. 1290

At the request of Mr. SIMON, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1290, a bill to guarantee a work opportunity for all Americans, and for other purposes.

S. 1381

At the request of Mr. KASTEN, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1381, a bill to amend the Internal Revenue Code of 1986 to increase to 100 percent and make permanent the deduction for health insurance for self employed individuals.

S. 1646

At the request of Mr. LEVIN, the names of the Senator from Michigan [Mr. RIEGLE], the Senator from Illinois [Mr. SIMON], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 1646, a bill to implement key provisions of the Great Lakes Water Quality Agreement to protect and restore the Great Lakes.

S. 1651

At the request of Mr. MCCAIN, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1651, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United States Organization.

S. 1653

At the request of Mr. BAUCUS, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1653, a bill to preserve the solvency of the railroad retirement system.

S. 1698

At the request of Mr. GORE, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1698, a bill to amend the Communications Act of 1934 to provide for fair marketing practices for certain encrypted satellite communications.

S. 1752

At the request of Mr. HEINZ, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1752, a bill to exclude the Social Security Trust Funds from the deficit calculation and to extend the target date for Gramm-Rudman-Hollings through fiscal year 1997.

SENATE JOINT RESOLUTION 198

At the request of Mr. SIMON, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Washington [Mr. ADAMS], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 198, a joint resolution designating November 1989 as "An End to Hunger Education Month."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Friday, October 20, beginning at 2 p.m., to hold a hearing to hear Forrest J. Remick, nominated by the President to be a member of the Nuclear Regulatory Commission and David C. Williams, nominated by the President to be Inspector General, Nuclear Regulatory Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on October 20, 1989, to hold a hearing on the nominations of Dr. James B. Wyngaarden of North Carolina, and Dr. J. Thomas Ratchford of Virginia, to be Associate Directors of the Office of Science and Technology Policy [OSTP].

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Friday, October 20, 1989, at 10 a.m. to conduct a hearing on the HUD section 8 Moderate Rehabilitation Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on October 20, 1989, beginning at 9 a.m., in 485 Russell Senate Office Building, on the National Indian Forest and Woodland Enhancement Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on October 20, 1989, at 2 p.m., to hold a hearing on judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

LET THE OSPREY FLY

● Mr. BENTSEN. Mr. President, there are times when old ways of doing things are not good enough, when technological breakthroughs open up almost limitless new opportunities that previously were unthinkable.

In science, sports, even politics, often the most important spur to revolutionary developments is the proof that something can happen. The first splitting of the atom, the first heart transplant, the first 4-minute mile, and maybe now even the first voluntary relinquishment of power by a Communist government.

When radically new technology appears in military weaponry, however, we have been slow to adopt it or to adapt our planning to it. For decades, the U.S. Navy resisted iron-clad, steam-powered ships and later submarines. The U.S. Army was steadfastly defending the viability of horse cavalry even after the German blitzkrieg into Poland demonstrated that tanks were the king of the battlefield.

Now we are witnessing another giant leap forward in aircraft technology—the tilt-rotor V-22 Osprey, which combines the advantages of maneuvering helicopters and fast, long-distance airplanes. But this system is being resisted by Pentagon number crunchers who say it costs too much for a marginal mission.

That is a terribly short-sighted view, Mr. President. It is based on a closed logic that is internally consistent but narrow and incomplete. It also depends upon the accuracy of its assumptions regarding future conflicts.

In Thursday's Washington Post a well-regarded defense analyst criticizes the opponents of the V-22 Osprey precisely for their fixation on outdated scenarios. Dov S. Zackheim, formerly Deputy Undersecretary of Defense, says the V-22 "is an innovative response to the dilemma posed by unforeseen demands for military operations, in scenarios where precise measurement of benefits is impossible."

Mr. Zackheim also notes that our forces will need the kind of flexibility the V-22 provides for contingencies outside of Europe, where the Marines are most likely to be used.

Mr. Zackheim's article underscores the potential value of the V-22 in a world more often turbulent and chaotic rather than neatly ordered and predictable. He answers the systems analysts by dismissing the relevance of their most cherished scenarios. And he strengthens my own belief that the V-22 is necessary—not only for its planned mission for the Marine Corps, but also for many other missions as well.

Mr. President, I hope that we are wise enough to see the possibilities offered by this new technology which are still just beyond the horizon.

I ask that the article by Mr. Zackheim be reprinted in the RECORD.

The acticle follows:

LET THE OSPREY FLY: IT'S EXPENSIVE AND WORTH EVERY DOLLAR IT COSTS—HERE'S WHY

More than a quarter of a century has passed since Robert McNamara introduced cost/benefit and systems analysis to a skeptical Pentagon. Since then, the quantitative approach to weapons program evaluation has become the Defense Department's norn. Nearly all new weapons systems are now justified in terms of what is claimed to be rigorous analysis.

A key element of such analysis has been the presumption of certainty regarding real-world conditions in which the weapons in question might be employed. For example, if one assumed a fixed period in which troops must be moved to Europe before a war ("warning time," in the Pentagon's parlance) one could then employ hard quantitative analysis to choose among competing ways to move the troops within the time required. But if one were not certain of the length of warning time nor, indeed, certain as to where the war might take place, the so-called "measures of effectiveness" that determine the benefits that competing systems offer could not long be defined in precise terms.

For years the Pentagon has attempted to sidestep the analytical dilemma posed by unpredictable scenarios. Systems analysts have postulated a highly stylized sequence of events calling for a Warsaw Pact invasion of Western Europe after NATO had but 10 days in which to prepare its defenses. The benefit of various land and tactical air programs was measured on the basis of their ability to meet requirements generated by this scenario.

Maritime forces were another matter, however. The Navy and Marine Corps have constantly been called upon to intervene in a host of contingencies whose occurrence had not been forecast. In turn, these services have stressed the importance of multipurpose units whose utility would be valuable whatever the contingency. Pentagon programmers, particularly in the Office of the Secretary of Defense, bitterly opposed many maritime programs in no small part because they did not lend themselves to quantitative analysis. As a result, the past 30 years of U.S. military development have witnessed countless battles between OSD and the Navy Department over aircraft carriers, amphibious ships and various fighter planes. In each case, the OSD staff cited high costs and uncertain benefits and preferred other systems.

The long-standing mind-set of Pentagon programmers has led to their opposition to the Marine Corps' V-22 Osprey program virtually since its inception. Osprey is a hybrid fixed-wing aircraft and helicopter. It offers the Marines unusual flexibility in moving troops from ship to shore. It is an innovative response to the dilemma posed by unforeseen demands for military operations, in scenarios where precise measurement of benefits is impossible. But it is extremely costly. It fails the test of precise cost/effectiveness measurement, because its effectiveness does not lend itself to measurement.

Not surprisingly, elements within the Office of the Secretary of Defense have disapproved of Osprey since its inception. After failing to persuade two previous Secretaries of Defense to kill the Osprey, these critics were able to win over Dick Cheney. The Department of Defense has therefore asked Congress to cancel the Osprey. The House Appropriations subcommittee on defense has resisted the Department of Defense's request and funded procurement of the plane. The Senate subcommittee has only funded continued Osprey research and development, an approach that still makes the Osprey's future highly uncertain.

Senate appropriators should ask themselves whether they wish to be aligned with those who will always opt for the familiar and measurable against the revolutionary and unquantifiable. The international climate is changing radically, to the consternation of McNamara's legatees. To be sure, Osprey makes less sense in the Pentagon's favorite NATO/Warsaw Pact scenario. But this vision of the world is losing credibility daily. The Soviets have announced unilateral force cuts in Europe, President Bush has set a one-year timetable for an agreement for mutual withdrawal of forces from Europe and the Warsaw Pact allies seem more intent on feuding among themselves than on mounting a threat to NATO. At the same time, the United States finds itself involved in an unanticipated conflict, a drug war that threatens to consume ever greater defense resources for programs whose effectiveness cannot be measured in the old, conventional ways. Moreover, the potential for military intervention outside Europe has not receded, and the demands for flexibility—to deal with whatever contingency might arise—are likely to grow. The systems analysts have problems. The world is passing them by.

Many senators have continually asserted that there must be a match between resources and strategy and that our strategy must be forward-looking rather than leading us to prepare to fight yesterday's war tomorrow. The Osprey is one of the first opportunities for Congress to make a statement—in concrete terms—about the importance of supporting programs that are relevant to a strategy that accounts for the current flux in the international climate. If the senators believe their own assertions, they can act on them by yielding to their House counterparts so that the Osprey will support the Marines in battles that no one can predict but are certain to materialize.●

PANAMA COUP ATTEMPT

● Mr. COCHRAN. Mr. President, our distinguished colleague from Maine [Mr. COHEN], wrote a very thoughtful and persuasive Op-Ed article for the Washington Post this week on the subject of the Panama coup attempt.

He carefully reviews the facts and concludes that President Bush made the correct decision not to commit U.S. troops to the attempt. I concur.

I invite the attention of the Senate to this helpful discussion of the questions which have been raised about this issue.

[From the Washington Post, Oct. 17, 1989]

NORIEGA: NOT WORTH AMERICAN KILLING

(By William S. Cohen)

The recent attempt to topple Manuel Noriega from power succeeded only in directing a torrent of criticism toward President

Bush. A flock of hawks has been released on Capitol Hill. Liberals and conservatives, now sporting the same plumage, rage over the president's alleged irresoluteness. Where was the firepower to match the heated rhetoric? Why urge others to overthrow Noriega if we were not prepared to help? Why did the tough stand down when the going got tough?

White House and Pentagon officials respond that they were dealing with individuals of questionable reliability under circumstances involving the absence of solid information and sound military planning. Moreover, just to remind everyone that the finger of fault swings in a wide arc—they assert that our intelligence deficiencies were the direct product of congressional micromanagement and intermeddling.

Based upon the facts presented thus far, I believe President Bush made the correct decision not to send American forces into the heart of Panama City. Indeed, had American soldiers walked into a trap or died needlessly because of patent planning gaps or miscalculations, the president's critics would have pilloried him for recklessness or incompetence.

Indulging in recriminations is easy. A more productive exercise requires us to determine whether we should make fundamental changes in how we deal with foreign leaders we deem corrupt or inimical to our national interests. Several key issues need to be addressed:

Should the U.S. rule out the use of force to remove foreign leaders from power if they threaten American interests?

No, provided that such leaders pose a significant threat to interests that are clearly vital to our security.

If covert force is to be used, should guidelines be established that define permissible conduct on the part of U.S. personnel?

Yes. The president has the responsibility to establish a code of conduct for our diplomatic, military and intelligence personnel. Congress should provide advice and oversight, not management.

Were U.S. personnel hindered by unreasonable restraints (or fears) in providing assistance to Major Moises Giroldi's planned coup?

Perhaps. There is little doubt that the coup was poorly planned and executed. Critics of America's failure to provide more aggressive support for the coup suggest that U.S. officers at a minimum should have made sure Giroldi had a secure means to communicate with them, and that they should have advised the Panamanian officer of serious tactical flaws. This seems to be a reasonable enough suggestion, and yet it raises serious legal questions.

If, for example, the rebel officers had every intent of killing Noriega during the coup, then active support of these officers by U.S. personnel might have resulted in charges of their complicity in such assassination.

Should the current prohibition against assassinations be removed?

No. Following congressional disclosures of unsavory CIA activities during the 1950s and '60s, President Gerald Ford signed an executive order that banned all American personnel or agents from participating in assassination plots. Ronald Reagan reaffirmed that policy in 1981. While Executive Order 12333 is simple and unequivocal in its terms, it nonetheless poses significant factual and moral complexities in its application.

For example, what if the target of an attack is a group rather than an individual? Or the attack itself involves not a rifle's silver bullet but a bomb dropped from an FB-111? After all, Executive Order 12333 would appear to ban placing a poison pen in one of Col. Mu'ammar Qadhafi's jump suits, but permit the release of a gravity bomb from several thousand feet onto his desert compound. How is one then to presume? Does the law turn upon whether a bullet or bomb carries a victim's name?

These are not questions reserved for theologians, but practical difficulties confronting those who serve on the front lines of danger. In the killing zone there are many cruel anomalies. Morality there may be measured in meters. Combat soldiers may not slaughter unarmed civilians whom they believe are aiding our enemies. Yet pilots might incidentally vaporize an entire village with impunity if their purpose is to strike enemy strongholds.

The fact that it is difficult to determine the nature of an individual's intent, however, does not mean we should abandon any effort to make that determination.

President Bush intends to seek greater flexibility in dealing with coup-minded Panamanian military officers in the future. The principal problem now, of course, is that given Major Giroldi's fate, it is unlikely that anyone will undertake a coup without first placing a set of cross-hairs on Noriega's forehead. In that case it will be difficult to argue that his death will be incidental to the coup itself.

There is merit for the President and Congress to explore how we might clarify existing legal ambiguities that unwittingly may have reduced our intelligence officers to passive listening posts. Surely the executive can improve interagency communication, contingency planning and crisis management. But it would be a mistake to seize upon Major Giroldi's failed coup as a justification for removing the ban on assassinations.

We have a tendency to take snapshots of today's events and airbrush away unpleasant experiences from our past. But it is important to remember that America reaped no political rewards in the coups that resulted in the deaths of South Vietnam's President Ngo Dinh Diem and Chile's Salvador Allende. And many will always wonder whether our own attempts to murder Fidel Castro played a role in the assassination of President John Kennedy.

Manual Noriega is a brutal and corrupt dictator. Few will weep at his funeral. But we have made far more of him than he deserves. He is a menance to his people, but does not, as yet, pose an imminent threat to our vital interests. If he should threaten the lives of American citizens in Panama or interfere with our rights under the Panaman Canal treaties, we will have ample reason to move directly against him.

As for now, Noriega sits uncomfortably on a "throne of bayonets," and the day is not long when he will be forced to abandon it. The United States does not need to take a coup guide or an assassin's rifle from a locked closet and place it in the hands of surrogates to hasten that day.●

IN OPPOSITION TO LEGALIZING DRUGS

● Mr. LEVIN. Mr. President, in the past few months there have been a spate of articles and op-ed pieces suggesting that we ought to legalize drugs. I rise today to voice my opposition to such a policy.

Proponents of legalization make numerous arguments. All of them specious. One of the most far-fetched of these arguments is that if drugs were legal, fewer people would use them.

This argument flies in the face of the facts. Some of our European allies have experimented with legalization, only to watch as problems of drug abuse and addiction worsen. The New York Times carried an article about drug addiction in Italy, where heroin use is legal and consequently, out of control.

The article points out that there are 300,000 addicts in Italy, a country with a population of 57 million. That means that one out of every 190 persons is a heroin addict.

If the United States had the same per capita rate of addiction, there would be roughly 1.3 million heroin addicts, or two and a half times as many as we have now.

Proponents of legalization insist that, evidence to the contrary, we cannot be sure that if we legalized drugs, more people would abuse them. I disagree.

Examples like that of Italy are persuasive evidence that by legalizing drugs we undermine efforts to persuade children of the dangers of addiction. With the lower price sure to result from legalization, and absent the strong warning implicit in illegality, more people, especially youngsters, will experiment with drugs.

If more people try drugs, more people will become addicted. Is society really ready to write off millions of people to a dangerous and debilitating addiction?

I hope not.

Mr. President, I ask that the article from the New York Times, "Rising Heroin Use and Addict Deaths Alarm Italy, Where Drug is Legal" be printed in the RECORD.

The article follows:

RISING HEROIN USE AND ADDICT DEATHS ALARM ITALY, WHERE DRUG IS LEGAL

(By Marlise Simons)

MILAN, ITALY.—Calm as if on a coffee break, two young couples sat down on a bench in the Piazza della Republica and started shooting heroin into their arms.

"It's what we do," one of the young men said matter-of-factly, barely audible above the traffic din. The group seemed to draw their confidence from a national law that permits narcotics for personal use.

There are 100,000 or so heroin users in Milan, a city that the police now call the European heroin capital.

At a time when cocaine has started pouring into major cities and resorts around the Mediterranean, the police and health workers here bemoan the overwhelming heroin problem. They say that more than all other drugs, heroin still casts the nastier shadow, draws in more addicts, spreads AIDS and claims more and more lives.

"We find bodies in parks, in cars, in cellars," said Stefano Rea, chief of the crime squad of the national police in Milan. "Italy was a few years behind other countries with the drug problem. But like governments everywhere, we are not capable of handling it."

The rapid rise of heroin use in Italy has left the country with the largest number of drug-related deaths in Western Europe. In 1988, the Government said, 809 people died from heroin overdoses, almost three times the numbers in 1986. Health officials say that with people widely sharing needles, more than half the country's estimated 300,000 heroin users have been infected with AIDS.

In Milan, the country's thriving industrial center, the size and growth of the problem have left experts baffled and groping for the motives behind it.

This is Italy, people argue, a country where most young people continue to live with parents until marriage and where even hard liquor could never compete with the moderation of wine. Some look for parallels with American or European cities where heroin is an older problem.

"Northern Italy does not have the poverty of the American inner cities," a foreign drug expert said, "but traffickers have pushed the drug here because this is where the money is."

Social workers say there is no simple profile of the addict. They include factory workers in Turin, students in Padua and Venice and recruits on military bases. In Milan, many users are professionals, some even nurses or doctors.

"These are not the rebels of the 60's or the 70's," said Elena Rosci, who coordinates the 20 municipal drug treatment centers in Milan. "Now the situation is stranger, harder to understand. Many addicts have jobs, and most of them have regular contact with parents or live at home."

Treatment centers have opened mainly in Milan's newer neighborhoods, the vast and drab apartment complexes that sprang from the economic boom of the 1960's, a time when many Italians left their villages and moved to the cities of the north.

"These are neighborhoods of uprooted people," Mrs. Rosci said. "We are finding all the problems are worse here—alcoholism, mental problems and drugs."

Early in the day, sometimes in the evening, well-dressed young people arrive at the centers to see a doctor or a psychologist. Often they are accompanied by a parent or a relative. More than 2,000 users are getting treatment in the city clinics, Mrs. Rosci said. About 2,000 more go to two dozen private clinics, most of which are run by religious groups.

The heroin that is used here comes largely from Turkey and Syria and partly from Bangladesh and India, the police say. It comes overland, stashed away in the huge international trucks that often travel sealed and are inspected only at their final destination. Couriers also bring it in by plane or boat from South Asia.

FIRST ARRIVED 15 YEARS AGO

Heroin first arrived a decade and a half ago when Italy was a transshipment point for Europe and the United States, an American drug agent recalled. "The country is perfect for ports, close to the rest of Europe, and it had very experienced organized crime," he said.

The crime networks from southern Italy then opened a drive to market heroin in Italian cities in the early 1980's, the agent said, adding, "Now the crime families are jockeying for position and carving up the new cocaine business."

Italian courts have begun to tackle major importers, but the police say they have hardly made a dent. The police and social workers are also frustrated over the long debate in Parliament. Legislators have been bickering for more than a year over how to update Italy's 1975 drug laws. The Socialist Party wants to apply tougher punishments for dealers, seize their assets and ban permission to hold small quantities of narcotics for personal use. Others argue that drugs must be liberalized altogether to take the profits out of trafficking.

"We need tough, tough laws, sentences of 30 years," said Police Chief Rea, interrupting to bark orders into telephones in the office where he directs the 300-man crime squad. "What are the deterrents if you can earn huge profits and risk only three, four years in jail?"

Chief Rea and his colleagues insisted that they felt much encouraged by Washington's new drug offensive. But they pondered with clear reluctance the question of whether there was any wisdom in liberalizing drugs to outmaneuver the traffickers.

"It might lead to a drop in the delinquency," Chief Rea said. "But if the state sells or gives out drugs in a pharmacy, it should put the person immediately into a rehabilitation center and scale down use."

Staff members at the treatment centers disagree deeply over another major point in the parliamentary debate. This holds that addicts should be given the choice of going to jail or accepting obligatory rehabilitation.

"Any therapist can tell you that you cannot cure people who do not want to be cured," said Mrs. Rosci, the treatment coordinator.

Others reason that health workers have achieved little in the years of treating the addict as a helpless, sick person. "For a long time therapists were on the side of the sick addict," said Dr. Robert Bergonzi, who works at a large private drug clinic.

But he said he and many other therapists now believe that parents and others who yield influence should put more pressure on the addict.

"We are paying for a long time of tolerance in Italy," he said. "Now we have to go the opposite route."●

AFGHAN POLICY

● Mr. HUMPHREY. Mr. President, when the Soviets completed their withdrawal from Afghanistan last February the State Department proudly predicted that the Kabul regime was on the verge of collapse, and that the Soviets has abandoned any long-term military interests in Afghanistan. Many of the so-called Afghanistan experts around the country openly endorsed that assessment. There was one prominent and outspoken dissenter to that conventional wisdom: Rosanne Klass of Freedom House.

When I first established the Congressional Task Force on Afghanistan in late 1984. Rosanne Klass was one of the first Afghan experts I consulted. Over the years, the task force has relied heavily on her expertise and dedication to this issue. As director of the Afghanistan Information Center in New York, she is without question one of the foremost specialists on Afghanistan.

In her testimony before Congress and numerous articles Rosanne has consistently warned of the pitfalls in U.S. policy. Her writings about Afghanistan have been prophetic. She not only predicted the invasion of Afghanistan in the late seventies, but she accurately predicted the manner in which the Soviets would use the Geneva accords to cement their regime in Kabul. Nobody who read her impressive book "Afghanistan: the Great Game Revisted" should be surprised by what the Soviets are doing today in Afghanistan.

The editorial follows:

[From the Wall Street Journal, Oct. 18, 1989]

UNITED STATES MUST REASSESS AFGHAN POLICY

(By Rosanne Klass)

When the Soviets announced their last soldier has left Afghanistan in February, the voices of skepticism were all but drowned out by an international chorus of euphoria. It was "the Soviets' Vietnam." The Kabul regime would fall. Millions of refugees would rush home. A resistance government would walk into Kabul. Those who bought that illusion are now bewildered. Eight months after Gen. Boris Gromov walked across the bridge into the U.S.S.R., a Soviet-controlled regime remains in Kabul, the refugees sit in their camps, and the restoration of Afghan freedom seems as far off as ever.

But there never was a chance that the Afghan resistance would overthrow the Kabul regime quickly and easily. Sovet leaders said they would support their Kabul clients by all means necessary—and did. The U.S. said it would fully support the resistance—and didn't.

With the February 1987 U.N. accords "relating to Afghanistan," the Soviet Union got everything it needed to consolidate permanent control. The terms of the Geneva accords leave Moscow free to provide its clients in Kabul with assistance of any kind—including the return of Soviet ground forces—while requiring the U.S. and Pakistan to cut off aid. The only fly in the Soviet ointment was the last-minute addition of a unilateral American caveat, that U.S. aid to the resistance would continue as long as Soviet aid to Kabul did. But as soon as the accords were signed, American officials sharply reduced aid. In February 1989, when the Soviets said they had completed their pullout, the U.S. cut it further.

Not so the Soviets. Gen. Gromov himself said Soviet troops expected to leave behind more than $1 billion of military equipment and installations for the Kabul regime. Since the troop withdrawal, Moscow has poured in an additional $200 million to $300 million worth per month—nearly $2 billion since February, equivalent to the total U.S. aid to the resistance in nine years. This includes what Deputy Foreign Minister Yuli Vorontsov fetchingly called "new peaceful long-range weapons," including more than 800 SCUD missiles.

By early May, Moscow has delivered, for example, 1,000 trucks, about 100 tanks, artillery and hundreds of other combat vehicles.

Later that month, it added an entire tank brigade, including 120 T-72 tanks and more than 40 BMP state-of-the-art infantry fighting vehicles. By September, a new Reinforced Motorized Rifle Brigade with an additional 300 combat vehicles, 1,000 more trucks and 10,000 Soviet-trained Afghan troops has arrived in Kandahar. In the last few weeks, Moscow has added FROG-7B missiles, the bomber version of the An-12, MiG-23BN high-altitude aircraft, MiG-29s, which can outfly Pakistan's U.S.-built F-16s, and Sukhoi SU-27 fighter-bombers, which can outfly the MiG-29s.

Moscow claims this is all needed to protect the Kabul regime against the guerrilla resistance. It is well-known that the regular Afghan infantry is filled with reluctant conscripts. But this is not the entire Afghan army, and it is not long Kabul's only military force. Complete units have been trained and indoctrinated in the U.S.S.R. and other East bloc nations; 30,000 to 40,000 of these troops have returned.

In addition, the regime has established well-paid paramilitary forces totaling more than 100,000, including 35,000 Soviet-trained troops of the Interior Ministry (KHAD/WAD), which still is directed by 1,500 Soviet KGB officers. Even if not all these forces are committed to the regime they are now dependent on it. And thousands of Afghan children have been taken to the Soviet Union, where they are hostage for the behavior of their families.

Since 1981, Indian military advisers have been assisting the Kabul regime. In preparation for the withdrawal, Moscow, Kabul and New Delhi signed two agreements for several hundred newly civilian Indian experts to replace some of the more visible Soviet military personnel. Cuban military personnel also have been active in Afghanistan since 1979. The Soviets cut a deal with Iran: a future Iranian role in Afghanistan in exchange for Iranian support of Soviet policy. The deal was symbolized by the restoration of the Shi'ite Sultan Ali Keshtmand to the Afghan prime ministry.

Moreover, serious questions have been raised about the claimed withdrawal of Soviet forces. Before his assassination in 1988, President Zia of Pakistan repeatedly stated that fresh Soviet troops were being inserted into Afghanistan even as others were ostentatiously withdrawn. Rep. Bill McCullum (R., Fla.) reports that these included 20,000 to 30,000 Soviet Central Asian KGB Border Guards, ethnically indistinguishable from Afghans and wearing unmarked uniforms.

Meanwhile, the Kabul regime is increasingly successful at portraying the resistance as bloody-minded fanatics. In this they are aided by years of American, European, Pakistani and Saudi support for the most extreme factions—radical Islamic fanatics with leaders whose policies are anathema to the Afghan public. This heavy outside support for the worst has undermined better, moderate leaders.

In autumn last year, for example, the regime garrison at Kandahar was prepared to surrender the city to resistance moderates. At the last minute, however, Pakistani officials sent in Gulbuddin Hekhmatyar, perhaps the most hated and feared of the extremists, with a demand that the surrender be made to his forces. The deal fell through, and Kandahar remains a major regime base.

The resistance lacks not only air power, armor and expertise but often such essentials as maps, mine detectors, or even winter gloves. Experienced resistance commanders wanted to use guerrilla action and siege tactics to wear down the regime. Instead, they were pressured by Pakistan's ISI, the channel for their support, into attacking Jalalabad. They took more than 25% casualties; journalists report that they faced minefields without mine detectors. The wonder is not that the resistance has failed to topple the Kabul regime, but that it continues to exist and fight at all.

Last summer, in response to congressional criticism, the State Department and the CIA said they had resumed military aid to the resistance months after it was cut off; but it is not clear how much is being sent or when it will arrive. For months the resistance has been defenseless against air attack. Thus far there is no indication it has been re-supplied with Stingers or other anti-aircraft weapons. Indeed, U.S. officials have indicated to the press that the continuation of aid depends on what success the weakened resistance achieves by the end of this year. Moscow and Kabul must have found that information useful.

For a decade U.S. policy has been incoherent, based on miscalculation and the defense of bureaucratic and political turf. No settlement negotiated by others can force the Afghan people to give up their struggle. A cutoff of U.S. military aid would merely abandon them to die in vain. Creation of a new, realistic U.S. policy is long overdue.●

SECRETARY BENNETT'S VISIT TO IOWA

● Mr. GRASSLEY. Mr. President, last week I had the privilege of hosting the National Drug Control Policy Director, Dr. William Bennett, on a tour of my home State of Iowa. Secretary Bennett spent 24 hours seeing firsthand the problem of drugs in rural America. We had the opportunity to visit with Iowans who are involved with the many facets of the drug problem—State and local policymakers; residents of a low-income housing project; law enforcement officials; drug treatment center workers and residents; and students, teachers, and parents at a high school. I know Iowans were glad to have the ear of the President's top adviser for the war on drugs—and he was able to learn more about the problem in America's heartland and witnessed Iowans banding together to solve their drug problems.

While visiting the high school in Ogden, IA, we learned about a drug prevention program that is working. Students, parents, and teachers are all working together to promote drug-free lifestyles and help those who may have already become involved in drug use. I would like to include for the RECORD the speech presented by Mr. Stan Friesen, the principal at Ogden High School, welcoming Dr. Bennett on October 10, 1989.

STATEMENT PRESENTED BY STAN FRIESEN, HIGH SCHOOL PRINCIPAL

Secrtary Bennett, Senator Grassley, Senator Harkin, Congressman Tauke, welcome to Ogden and the Ogden Community Schools. Secretary Bennett, we want to say how pleased we are that you have come to Ogden so that we might share with you what we are doing and some of our needs and concerns.

What we are doing here in Ogden is being done in many schools, large and small, throughout Iowa; it is representative of the many positive things happening in Iowa's schools and communities.

In Ogden we have a program that is continually developing. We have a staff that tries to the best of our ability by offering our time and talents because we are concerned about the choices and decisions that young people face today.

I would first like to touch on some of the problems and concerns we have.

Drugs are readily available even in this small community ranging from alcohol, marijuana, speed, to crack and cocaine. We are not immune.

In a small community like ours, the problems of one student affects many other people, including the other students in the classroom. According to an annual study conducted by the Iowa Department of Education, our percentages of drug use and abuse are the same as in urban areas, but the impact may be greater because these people touch a greater percent of our local population.

If we are to win a War on Drugs, prevention and intervention must address us individually as well as society-wide. Communities and school systems like Ogden are ideal settings for identifying individual abuse and finding help for those abusing since they are not "hidden among the masses."

It is our hope that government resources will be accessible and sensitive to the needs of the smaller, rural areas. Of particular concern to us here in Ogden is a need for personnel to provide after-care for our students who have completed treatment. We do not have enough trained personnel to provide them with the support they need in this area.

Smaller schools and communities do not have enough personnel to complete mounds of paperwork when resources become available. It takes a lot of faith to hand out lots of money without tying excessive restrictions and paperwork to it, but we are asking you to have faith that we will use that support where and how it will do the most good for the young people in our local communities.

Comparisons are made in education between the United States and other countries. It seems we should also be making comparisons in drug law enforcement and making our laws tougher and to allow less judicial discretion, thus more consistency. Our young people need to see adults suffering tough penalties and they need to learn responsibility for their own actions through strong consequences.

We need support for our local law enforcement personnel, and strong county sheriff systems like we have in Boone County.

Alcohol abuse is the number one drug problem among our students. Alcohol commercials need to be taken off television, as was done with tobacco, where they have such a strong impact on our young people. We need positive role models presenting positive drug free messages in the media.

We believe this drug-alcohol is a major threat to our society and that efforts in controlling its use must be as diligent as in fighting nicotine and cocaine. We realize the power of the alcohol lobby and the pressures they bring on those involved in our political system. We need to reach students

nationwide about the effects of alcohol the way Surgeon General Koop did for AIDS, tobacco and his workshop on Drunk Driving.

Now, some of the things we are doing here in Ogden. We are sending materials with Jolene to describe in more detail what we are doing in the Ogden Schools, including personal letters from people who wanted to say something to you. I think it is important to note that our efforts here in Ogden were not brought about as a result of a crisis, a death or tragic accident, but because some of our young people expressed a desire and need for adult support.

We want our students to have the opportunity and knowledge needed to make intelligent choices, and not to be forced into decisions that will adversely affect their futures. We try very hard to recognize the importance education can have on drug usage and the importance of maintaining a positive learning climate, modeling values, and developing positive self-esteem. We must continue to support within our school systems education with a drug-free message, and education in parenting and family skills. We must emphasize positive self-esteem and coping skills so that appropriate choices can be made. We start this at a young age through our Elementary Counseling Program and Health Curriculum.

Our intervention efforts center around a Student Assistance Team of volunteers who have completed intervention training. We discuss concerns and information on students where problems are appearing. We do not diagnose, but we can and do try to recognize symptoms and seek the appropriate resources to help students in need. We maintain a respect for the student's need for confidentiality. Referrals come to the team from other teachers and school staff members, parents, and students' peers. That kind of trust is very important to the team's operation and effectiveness.

Our AKD Program—Activities, Kids, and Drugs—provides drug-free activities for our students, including New Year's Eve and Senior Class Night lock-ins, dances, and "beach" parties on the sand volleyball courts. Students and parents are actively involved in this phase of our program. Positive role models for our students, including Bruce Reimers and Anthony Munoz of the Cincinnati Bengals, have appeared in our classrooms and at meetings required for all students and their parents involved in co-curricular activities. We have taken groups of students of various age levels on retreats to provide educational and attitude-awareness activities.

One of the most important ingredients in any success we have had is the involvement of parents and community leaders. As a school system we cannot do it alone.

We find there is power in working as a group that can sometimes influence students in making choices about their drug use or non-use. Your visit here today gives us even greater integrity, and we appreciate that.

As a school staff and as a community we here in Ogden are doing what we feel we must do, what is our professional responsibility to do. The benefits come when people are willing to confront problems; when there is care and concern for helping these young people make the right choices, or helping them overcome the results of wrong choices.

On a personal note Secretary Bennett, we respect and appreciate the effort you are putting forth in the fight against drugs.

We are doing what we should be doing—caring about our students. Our young people are our nation's primary resource.

Now I am sure you have some questions, so fire away.●

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of calendar Nos. 302, 303, 304, 305, 306, 307, and 308 en bloc, that the committee amendments where appropriate be agreed to, that the resolutions be deemed read a third time and passed, that the preambles be agreed to and motions to reconsider the passage of the resolutions be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

EARTH DAY

The joint resolution (S.J. Res. 159) to designate April 22, 1990, as "Earth Day," and to set aside the day for public activities promoting preservation of the global environment, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 159

Whereas we face an international environmental crisis that demands the attention of the American people and citizens of every nation in the world, and we must build alliances that transcend the boundaries dividing countries, continents, and cultures in order to solve it;

Whereas we need to confront environmental problems of increasing severity, including climate change; depletion of the stratospheric ozone layer; loss of forests, wetlands, and other wildlife habitats; acid rain; air pollution; ocean pollution; and hazardous and solid waste buildup;

Whereas we must educate and encourage individuals to recognize the environmental impact of their daily lives by becoming environmentally responsible consumer, conserving energy, increasing recycling efforts, and promoting environmental responsibilities in their communities;

Whereas it will take major public policy initiatives to cure the causes of environmental degradation, such as phasing out the manufacture and use of chlorofluorocarbons, minimizing and recycling solid wastes, improving energy efficiency, protecting biodiversity, promoting reforestation, and moving toward sustainable development throughout the world;

Whereas almost twenty years ago, millions of Americans joined together on Earth Day to express an unprecedented concern for the environment, and their collective action resulted in the passage of sweeping laws to protect our air, our water, and the lands around us;

Whereas we must make the 1990s an "International Environment Decade", and forge an international alliance to respond to global environmental problems; and

Whereas to inaugurate this environmental decade, we must once again stand up together in cities, towns, and villages around the world for a day of collective action to declare our shared resolve: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 22, 1990, shall be designated and proclaimed as Earth Day, and that the day shall be set aside for public activities promoting preservation of the global environment.

INTERNATIONAL YEAR OF BIBLE READING

The joint resolution (S.J. Res. 164) designating 1990 as the "International Year of Bible Reading," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 164

Whereas the Bible, the Word of God, has made a unique contribution in shaping the United States as a distinctive and blessed Nation and People;

Whereas deeply held religious convictions springing from the Holy Scriptures led to the early settlement of our Nation;

Whereas many of our great national leaders, such as Presidents Washington, Jackson, Lincoln, and Wilson, paid tribute to the important influence the Bible has had in the development of our Nation;

Whereas President Jackson called the Bible "the rock on which our Republic rests";

Whereas the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the Holy Scriptures in the lives of individuals, families, and societies;

Whereas, the Bible has had a profound positive effect in the shaping of individuals, families, and societies in many parts of the world;

Whereas, the Bible provides a major source of hope for the poor and repressed peoples of the world;

Whereas the family of nations now faces great challenges that will test international relationships as they have never been tested before;

Whereas the renewing of knowledge and faith in God through Holy Scripture reading can strenthen the family of nations and their respective people; and

Whereas numerous individuals and organizations around the world are joining hands to encourage international Bible reading in 1990: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1990 is designated as the "International Year of Bible Reading." The President is authorized and requested to issue a proclamation recognizing both the formative influence the Bible has had on many societies of the world and the need for world wide study and application of the teachings of the Holy Scriptures.

FIRE SAFETY AT HOME, CHANGE YOUR CLOCK, CHANGE YOUR BATTERY DAY

The joint resolution (S.J. Res. 177) designating October 29, 1989, as "Fire

Safety At Home, Change Your Clock, Change Your Battery Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 177

Whereas every year, 500,000 fires ravage the homes of Americans, resulting in over 6,000 deaths and 300,000 injuries;

Whereas home fires are the leading cause of accidental death and serious injury among children in the United States;

Whereas senior citizens, families in substandard housing, and the physically and mentally disabled are at high risk of becoming victims of fire;

Whereas 3 out of 4 homes have at least 1 smoke detector, but an estimated one-half are inoperable because of worn or missing batteries;

Whereas the International Association of Fire Chiefs estimates that the annual practice of changing batteries in smoke detectors would save thousands of lives and billions of dollars in property damage;

Whereas the Congressional Fire Services Caucus, with its broad-based bipartisan membership, reflects the concern of Congress for fire safety and its dedication to making it an important national priority;

Whereas the designation of a special day to remind Americans to properly maintain their smoke detectors, timed to coincide with the autumnal return to Standard Time, would greatly diminish this human tragedy; and

Whereas October 29, 1989, is the day Americans in jurisdictions on Daylight Savings Time return their clocks to Standard Time: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 29, 1989, is designated as "Fire Safety at Home—Change Your Clock, and Change Your Battery Day", and the President is requested to issue a proclamation calling upon the people of the United States to observe that day by maintaining their homes' first line of defense against fire by changing the batteries in their smoke detectors when they reset their clocks to Standard Time.

YEAR OF CLEAN WATER

The joint resolution (S.J. Res. 181) to establish calendar year 1992 as the "Year of Clean Water," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 181

Whereas, clean water is a natural resource of tremendous value and importance to the Nation;

Whereas, there is resounding public support for protecting and enhancing the quality of this Nation's rivers, streams, lakes, wetlands, and marine waters;

Whereas, maintaining and improving water quality is essential to protect public health, to protect fisheries and wildlife, and to assure abundant opportunities for public recreation;

Whereas, it is a national responsibility to provide clean water as a legacy for future generations;

Whereas, substantial progress has been made in protecting and enhancing water quality since passage of the 1972 Federal Water Pollution Control Act (Clean Water Act) due to concerted efforts by Federal, State, and local governments, the private sector, and the public;

Whereas, serious water pollution problems persist throughout the Nation and significant challenges lie ahead in the effort to protect water resources from point and nonpoint sources of conventional and toxic pollution;

Whereas, further development of water pollution control programs and advancement of water pollution control research, technology, and education are necessary and desirable; and

Whereas, October of 1992 is the 20th anniversary of the enactment into law of the Clean Water Act; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, the Congress of the United States hereby designates calendar year 1992 as the "Year of Clean Water" and the month of October 1992 as "Clean Water Month" in celebration of the Nation's accomplishments under the Clean Water Act, and the firm commitment of the Nation to the goals of that Act.

NATIONAL HOME CARE WEEK

The Senate proceeded to consider the joint resolution (S.J. Res. 184) to designate the periods commencing on November 26, 1989, and ending on December 2, 1989, and commencing on November 28, 1990, and ending on December 2, 1990, as "National Home Care Week," which had been reported from the Committee on the Judiciary, with amendments.

The amendments were agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, as amended, and the preamble, are as follows:

S.J. RES. 184

Whereas organized home care services to the elderly and disabled have existed in the United States since the last quarter of the 18th century;

Whereas home care is an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving these services;

Whereas since the enactment of the medicare home care program, which provides coverage for skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, and home health aide services, the number of home care agencies in the United States providing these services has increased from fewer than 1,275 to more than 12,000; and

Whereas many private and charitable organizations provide these and similar services to millions of individuals each year preventing, postponing, and limiting the need for them to become institutionalized to receive these services: Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the periods commencing on November 26, 1989, and ending on December 2, 1989, and commencing on November 25, 1990, and ending on December 1, 1990, as "National Home Care Week" are designated as "National Home Care Week", and the President is authorized and requested to issue proclamations calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.

The title was amended so as to read: "A joint resolution to designate the periods commencing on November 26, 1989, and ending on December 2, 1989, and commencing on November 25, 1990, and ending on December 1, 1990, as 'National Home Care Week'."

NATIONAL QUARTER HORSE WEEK

The joint resolution (S.J. Res. 186) designating the week of March 1 through March 7, 1990, as "National Quarter Horse Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was greed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 186

Whereas the American Quarter Horse Association was founded on March 15, 1940, to record and preserve the pedigrees of American quarter horses, and continues to serve such purposes;

Whereas the American quarter horse has played a significant role in the development of the United States and contributed to the western heritage of the Nation;

Whereas the American Quarter Horse Association has developed into the largest equine registry in the world, with more than two million eight hundred thousand American quarter horses and two hundred thousand individuals located in the United States and sixty-two foreign countries;

Whereas the American quarter horse industry has become invaluable to the agriculture industry of the Nation, and American quarter horses are enjoyed by more individuals than any other breed of horse in the world; and

Whereas the American Quarter Horse Association celebrates its fiftieth anniversary in March 1990: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of March 1 through March 7, 1990, is designated as "National Quarter Horse Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

NATIONAL GLAUCOMA AWARENESS WEEK

The joint resolution (S.J. Res. 194) designating November 12-18, 1989 as "National Glaucoma Awareness Week," was considered.

Mr. LAUTENBERG. Mr. President, I am pleased to have sponsored with Senator DURENBERGER, and other colleagues, Senate Joint Resolution 194, a resolution to designate the week of November 12-18, 1989, as "National Glaucoma Awareness Week."

Glaucoma is the second leading cause of blindness among Americans and some in our country are at greater risk than others. It is the leading cause of blindness among black people. Glaucoma is also a particularly devastating disease of the elderly, and usually strikes in middle age or later. There is a higher risk of glaucoma among those with diabetes and among those with a family history of the disease.

This resolution will help focus attention on the efforts of those who are working to encourage prevention and early treatment of this crippling disease. Two million Americans are believed to have glaucoma, which must be treated promptly if loss of vision is to be prevented. Glaucoma can be controlled when detected early. Sadly, however, people are often unaware of the disease until their eyes have been permanently damaged.

Glaucoma can be detected by a routine eye examination. A relatively simple procedure can provide early detection and treatment and an opportunity to reduce the tragic costs so often associated with the disease.

Mr. President, it is my hope that "National Glaucoma Awareness Week" will help alert the public to the tragedy of this disease. Early detection and treatment can help to save precious eyesight.

The joint resolution (S.J. Res. 194) was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 194

Whereas glaucoma is the second leading cause of blindness among individuals in the United States;

Whereas glaucoma is the leading cause of blindness among black individuals in the United States;

Whereas the risk of blindness from glaucoma significantly increases in older age groups;

Whereas diabetes increases the risk of developing glaucoma;

Whereas at least two million individuals in the United States have glaucoma and at least 50 per centum of the individuals with glaucoma are unaware of it;

Whereas eighty thousand individuals in the United States are already blind from glaucoma and five million to ten million Americans are believed to have undiagnosed and elevated intraocular pressure, often a silent symptom of glaucoma;

Whereas early detection is critical to preventing blindness from glaucoma; and

Whereas periodic comprehensive eye examinations are the best means of detecting glaucoma and the number of individuals that receive examinations could be increased through greater public understanding, awareness, and education: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 12 through 18, 1989, is designated as "National Glaucoma Awareness Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

STAR PRINT—S. 1742

Mr. MITCHELL. Mr. President, I ask unanimous consent that a star print be made of S. 1742, the Federal Information Resources Management Act of 1989, to reflect the changes I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY

RECESS UNTIL 2:30 MONDAY, OCTOBER 23, 1989; MORNING BUSINESS; RESUME CONSIDERATION OF H.R. 1231

Mr. MITCHELL. Mr. President, I ask unanimous consent when the Senate completes its business today it stand in recess until 2:30 p.m. on Monday, October 23, 1989, and that following the time for the two leaders there be a period for morning business until 3 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. I further ask unanimous consent that at 3 p.m. the Senate resume consideration of H.R. 1231, the Eastern Airlines bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 2:30 P.M., MONDAY, OCTOBER 23, 1989

Mr. MITCHELL. I ask unanimous consent the Senate stand in recess under the previous order until 2:30 p.m. on Monday, October 23, 1989.

There being no objection, the Senate, at 2:42 p.m., recessed until Monday, October 23, 1989, at 2:30 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 20, 1989:

ENVIRONMENTAL PROTECTION AGENCY

LAJUANA SUE WILCHER, OF KENTUCKY, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

E. DONALD ELLIOTT, OF CONNECTICUT, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

HOUSE OF REPRESENTATIVES—*Friday, October 20, 1989*

The House met at 10 a.m.

The Reverend Charles Mallon, permanent deacon, Holy Family Church, Mitchellville, MD, offered the following prayer:

The earth is the Lord's and the fulness thereof, the world and those who dwell therein; for he has founded it upon the seas, and established it upon the rivers.—Psalm 24:1-2.

Father, secure within this legislative body that same spirit which was set forth within the preamble of our Constitution. Support them in their efforts to establish justice, to insure domestic tranquility specially to those areas experiencing the effects of our recent earthquake, to secure the blessings of liberty to ourselves and our posterity.

We ask this through Christ our Lord, who lives and reigns with You, now and forever. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The Chair will ask the gentleman from Michigan [Mr. KILDEE] if he would kindly come forward and lead the membership in the Pledge of Allegiance.

Mr. KILDEE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3299. An act to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 3299) "An act to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990," disagreed to by the House, and agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints: From the Committee on the Budget: Mr. SASSER, Mr. RIEGLE, Mr. LAUTENBERG, Mr. SIMON, Mr. SANFORD, Mr. FOWLER, Mr. DODD, Mr. DOMENICI, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. GRASSLEY, and Mr. KASTEN; from the Committee on Agriculture, Nutrition, and Forestry: Mr. LEAHY, Mr. PRYOR, Mr. BOREN, Mr. LUGAR, and Mr. DOLE; from the Committee on Armed Services: Mr. NUNN, Mr. EXON, and Mr. WARNER; from the Committee on Banking, Housing, and Urban Affairs: Mr. RIEGLE, Mr. CRANSTON, Mr. SARBANES, Mr. DODD, Mr. SASSER, Mr. GARN, Mr. HEINZ, Mr. D'AMATO, and Mr. GRAMM; from the Committee on Commerce, Science, and Transportation: Mr. HOLLINGS, Mr. INOUYE, Mr. FORD, Mr. DANFORTH, and Mr. PACKWOOD; from the Committee on Energy and Natural Resources: Mr. JOHNSTON, Mr. BUMPERS, Mr. METZENBAUM, Mr. BRADLEY, Mr. WIRTH, Mr. MCCLURE, Mr. GARN, Mr. WALLOP, and Mr. MURKOWSKI; from the Committee on Environment and Public Works: Mr. BURDICK, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BREAUX, Mr. CHAFEE, Mr. SIMPSON, and Mr. DURENBERGER; from the Committee on Finance: Mr. BENTSEN, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. BAUCUS, Mr. MITCHELL, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, Mr. DANFORTH, Mr. CHAFEE, and Mr. HEINZ; from the Committee on Governmental Affairs: Mr. GLENN, Mr. PRYOR, Mr. SASSER, Mr. ROTH, and Mr. STEVENS; from the Committee on Labor and Human Resources: Mr. KENNEDY, Mr. PELL, Mr. METZENBAUM, Mr. DODD, Mr. HATCH, Mrs. KASSEBAUM, and Mr. JEFFORDS; from the Committee on Veterans' Affairs: Mr. CRANSTON, Mr. MATSUNAGA, and Mr. MURKOWSKI; to be the conferees on the part of the Senate.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 3299, OMNIBUS BUDGET RECONCILIATION ACT OF 1989

The SPEAKER. Pursuant to the previous order of the House of October 18, 1989, the Chair makes the following supplemental appointment of budget reconciliation conferees:

As additional conferees [child care], for consideration of subtitles D and E of title III of the House bill, and modifications committed to conference: Mr. MILLER of California and Mr. FAWELL.

The second panel appointed from the Committee on Education and Labor is appointed also for consideration of section 11851 through 11894 of the House bill—additional pension provisions—and modifications committed to conference.

The Clerk will notify the Senate of the change in conferees.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

Washington, DC, October 20, 1989.

Hon. THOMAS S. FOLEY,

The Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House at 6:17 p.m. on Thursday, October 19, 1989 and said to contain a message from the President whereby he transmits the Alternative Sequester Plan for Defense required by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

With great respect, I am

Sincerely yours,

DONNALD K. ANDERSON,

Clerk, House of Representatives.

ALTERNATIVE SEQUESTER REPORT FOR THE DEPARTMENT OF DEFENSE—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 101-101)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of Thursday, October 19, 1989, at page S13752.)

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to announce that pursuant to clause 4 of rule 1, the Speaker signed the following enrolled bills and joint resolution on Thursday, October 19, 1989:

H.R. 801. An act to designate the U.S. Court of Appeals Building at 56 Forsyth Street in Atlanta, GA, as the "Elbert P. Tuttle United States Court of Appeals Building";

H.R. 3385. An act to provide assistance for free and fair elections in Nicaragua; and

H.J. Res. 380. Joint resolution designating October 18, 1989, as "Patient Account Management Day."

□ 1010

REPRESENTATIVE RON WYDEN CITES ROADBLOCKS TO COMMERCIALIZATION OF FEDERAL LAB TECHNOLOGIES

The SPEAKER. Under a previous order of the House, the gentleman from Oregon [Mr. WYDEN] is recognized for 30 minutes.

Mr. WYDEN. Mr. Speaker, the taxpayers of this country invest very heavily in both basic and applied scientific research. Last year the Federal Government spent at least $60 billion for scientific investigations ranging from the development of new weapons systems to discoveries which may lead to cures for cancer.

Federal science amounts to 50 cents of every research dollar, public or private, that we spend in this country.

Many of these federally sponsored inventions, discoveries, and findings are absolutely essential to America's ability to compete in global markets. In my view these are indeed the keys to the competitive kingdom, especially with respect to improvements in manufacturing processes and techniques.

Unfortunately, and despite many good efforts by Members of Congress on both sides of the aisle, the lab door of Federal laboratories has been blocked when it comes to American business, large and small, that comes calling for these crucial technologies that have been financed by the Federal taxpayer.

Mr. Speaker, unfortunately the administration has talked a great deal about taking steps to modernize our industrial base so we can better compete in global markets, but they have done very little to energize what ought to be a key element in that effort, and that is to take better advantage of the sprawling Federal laboratory system and its priceless shelf of stock of state-of-the-art technology.

Earlier this month I chaired a hearing investigating this problem in the Small Business Subcommittee on Regulation, Business Opportunities and Energy. That followed a year-long inquiry by the staff of that subcommittee.

We found that a variety of obstacles now face the business persons of this country as they attempt to buy or borrow technologies from Federal labs. In fact, the new evidence shows that only a trickle of the huge Federal technology treasure trove may in fact be reaching U.S. business.

While the taxpayer spends $60 billion for these new scientific investigations in Federal laboratories, the evidence shows that licensing payments to Federal researchers and institutions total less than $4 million, which means for the taxpayer a return on research investment in this country of vastly less than 1 percent.

I would be happy to share a staff memorandum on this issue so important to our global competitiveness with my colleagues, but would like to just briefly describe some of the findings as well as some of the criticisms of the Federal technology transfer process that were raised at that hearing.

First, over the last 10 years Congress has passed a number of pieces of legislation creating mandates and incentives to encourage the transfer of these key technologies from each of the more than 700 labs within the Federal system.

At this point, many labs have not even developed basic guidelines for commercialization of the inventions and findings that have been called for in the statutes. Some labs are actually evading the commercialization process by coming up with new and even more creative arguments that transferring technology would violate national secrecy and security agreements.

Some labs guarantee failure of commercialization efforts by failing to create sufficient administrative and legal systems to sell the patented technologies.

Second, we found that at the agency or department level there is no central repository of information which details the kinds of scientific inquiry being made by the labs or the findings that have taken place.

There is no top down political leadership that operates to ensure technology transfer. Some lab directors apparently feel it is not a major part of their mission, a perspective which may be encouraged by ongoing vacancies in many key administration positions that relate to technology transfer from our Federal labs.

Opportunities for industry-government cooperation in high-technology intensive developments, such as high definition television, have been sidetracked by the administration. Apparently they fear that pinpointing key changes for major leaps in technology development constitutes some kind of industrial policy, and that has been a concept that fails the administration's political litmus test, and again is another reason why we are seeing a real breakdown in the ability to transfer these key technologies from Federal labs to the private sector.

The President's new science adviser, Dr. Allan Bromley, testified at our committee and acknowedged the subcommittee's findings, making it clear that the current process of transferring these technologies from the labs is now fraught with "byzantine complexities."

I am very hopeful that Dr. Bromley is really committed now to permanent major changes in this process. He did tell our subcommittee that early next week he plans to have a new blueprint for technological development for this country's industrial base to circulate among Members of Congress and the administration, and agreed to add a specific section to the report at the subcommittee's request that would outline how the administration plans to improve the way in which key technologies are transferred.

I am very hopeful that we will see some positive results as a result of that proposed plan for technological development for our country and specifically the sections that relate to improving technology transfer, and certainly plan to share the report that will be made available by Dr. Bromley with our colleagues in the Congress.

The last point I want to mention, Mr. Speaker, relates to our high-tech competitors overseas. South Korea and others in Asia are taking great advantage of new technologies.

In Europe, 1992 developments create a unified common market, and that will produce a continental powerhouse for transferring new technologies.

Every one of these economic systems has a common characteristic about it, and that is a superb ability to turn technologies from private and public labs, including their own Federal labs, into marketable products. I think it is high time that our Federal labs helped American business do at least as well.

One of the particularly distressing bits of testimony that was given to our subcommittee revolved around the point that the Japanese and the Europeans are even better at taking advantage of technological innovation in this country than our own industries are.

For example, attorney Robert H. Brumley, former general counsel in the Commerce Department, said that the Japanese are not picking our pockets, the Europeans are not picking our pockets, they are literally picking the new technologies up off the table.

So we have a problem of getting the technology from the Federal labs in this country to private industry, but it is quite clear also that foreign competitors are doing a better job of getting these technologies out of our labs than our own industry is.

So I think, Mr. Speaker, that there is a great deal to do with respect to this vital issue relating to our ability to create good jobs for the future. Our labs are going to have to reexamine their commitment to technology transfer. They are going to have to build a new plan to commercialize these important inventions. It is my view that technology transfer has to be a priority clarified through appointments, programs, and execution at the very highest level of the administration.

Our technology-hungry industries deserve real service, quality service, from our Federal labs, and not lip service. Our subcommittee intends to monitor these proceedings very carefully in the days ahead.

Mr. Speaker, I yield back the balance of my time.

□ 1020

DIRE EMERGENCY DISASTER SUPPLEMENTAL APPROPRIATIONS

(Mr. WHITTEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WHITTEN. Mr. Speaker, we all extend our deepest sympathy to the people of California and South Carolina because of the losses and hardships they are encountering because of the terrible tragedies which have hit their States and to the people of other areas affected where the loss of life and property is less. We all wish to extend on a national basis such aid and assistance as is available under existing law.

To that end I have introduced a bill today, for myself and on behalf of the member of the delegations of the State of California and the State of South Carolina and other areas affected by natural disasters of a national scale, House Joint Resolution 423, providing dire emergency supplemental appropriations to meet the needs of natural disasters of national significance. The bill reads as follows:

H.J. RES. 423

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution of September 29, 1989 (Public Law 101-100), is hereby amended by striking out "October 25, 1989" and inserting in lieu thereof "November 15, 1989" in section 102(c), and by adding the following new section:

"SEC. 108. (a) For necessary expenses in carrying out the functions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), an additional $1,100,000,000 for fiscal year 1990 to meet the present emergency, to remain available until expended.

"(b) For an additional amount to meet the present emergency to the Emergency Fund authorized by 23 U.S.C. 125, $1,000,000,000, to be derived from the Highway Trust Fund: *Provided,* That the provisions of 232 U.S.C. 120(f)(1) and 125(b)(1) shall not apply to amounts available in this Fund: *Provided further,* That obligations made from this Fund shall be in addition to the limitation on obligations established in the Department of Transportation and Related Agencies Appropriations Act, 1990.

"(c) For additional capital for the "Disaster loan fund", authorized by the Small Business Act, as amended, $500,000,000, to remain available without fiscal year limitation to meet the present emergency of which not to exceed $30,000,000 may be transferred to the "Salaries and expenses" account of the Small Business Administration for disaster loan servicing and disaster loan making activities.

"(d) For an additional amount necessary to enable the President to meet unanticipated needs to meet the present emergency arising from the consequences of the recent natural disasters, there is appropriated $250,000,000, to remain available until expended: *Provided,* That these funds may be transferred to any authorized governmental activity to meet the requirements of the natural disasters.

"(e) Such other amounts will be made available subsequently as required.

"(f) Obligations incurred under this section shall not be a charge against the Budget Act, Gramm-Rudman-Hollings, or other ceilings.

"This section may be cited as the fiscal year 1990 Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National Significance.".

CONFERENCE REPORT ON H.R. 2991

Mr. SMITH of Iowa submitted the following conference report and statement on the bill (H.R. 2991) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-299)

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2991) "making appropriations for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies for the fiscal year ending September 30, 1990, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 18, 32, 37, 84, 85, 98, 109, 111, 116, 121, 127, 130, 133, 159, 161, 163, 180, 183, 184, 185, 188, 190, and 192.

That the House recede from its disagreement to the amendments of the Senate numbered 3, 4, 6, 11, 25, 42, 52, 91, 112, 125, 134, 142, and 160, and agree to the same.

Amendment numbered 114:

That the House recede from its disagreement to the amendment of the Senate numbered 114, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$4,400,000;* and the Senate agree to the same.

Amendment numbered 162:

That the House recede from its disagreement to the amendment of the Senate numbered 162, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$82,000,000;* and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 2, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 113, 115, 117, 118, 119, 120, 122, 123, 124, 126, 128, 129, 131, 132, 135, 136, 137, 138, 139, 140, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 181, 182, 186, 187, 189, and 191.

NEAL SMITH,
BILL ALEXANDER,
JOSEPH D. EARLY,
BERNARD DWYER,
BOB CARR,
ALAN B. MOLLOHAN,
JAMIE L. WHITTEN,
HAL ROGERS,
RALPH REGULA,
JIM KOLBE
SILVIO O. CONTE,
Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
DALE BUMPERS,
FRANK R. LAUTENBERG,
JIM SASSER,
BROCK ADAMS,
ROBERT C. BYRD,
WARREN B. RUDMAN,
TED STEVENS,
MARK O. HATFIELD,
ROBERT W. KASTEN, Jr.,
PHIL GRAMM,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2991) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1990, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action by the managers and recommended in the accompanying conference report:

FUNDING THE WAR ON DRUGS

Included in this bill are the departments and agencies involved in law enforcement efforts against illegal drug trafficking. The total of the conference agreements for the drug-related accounts in H.R. 2991, when added to total amounts included in Title IV of H.R. 3015 for those accounts, exceeds by $186,000,000 the amounts requested by the Administration for fiscal year 1990, including the budget amendments to combat violent crime and to implement the national drug control strategy. The following table identifies the total amount available for the agencies fighting the war on drugs in the Department of Justice and the Judiciary:

FISCAL YEAR 1990 FUNDING—DRUG-RELATED AGENCIES

[In millions of dollars]

	Budget request	Conference H.R. 2991*	Title IV H.R. 3015	Total available
Department of Justice:				
General administration	$101	$87	$10	$97
General legal activities	304	258	41	299
U.S. attorneys	526	445	81	526
U.S. marshals	241	217	24	241
Support of U.S. prisoners	160	137	23	160
Fees and expenses of witnesses	57	57		57
Assets forfeiture fund	100	75	25	100
Organized crime drug enforcement	215	169	46	215
Federal Bureau of Investigation	1,550	1,453	97	1,550
Drug Enforcement Administration	556	492	64	556
Immigration and Naturalization Service	891	878	17	895
Federal Prison System:				
Salaries and expenses	1,153	1,098	55	1,153

FISCAL YEAR 1990 FUNDING—DRUG-RELATED AGENCIES—Continued

[In millions of dollars]

	Budget request	Conference H.R. 2991*	Title IV H.R. 3015	Total available
National Institute of Corrections	10	10		10
Buildings and facilities	1,401	401	1,000	1,401
Office of Justice Programs	446	330	309	639
Subtotal	7,711	6,107	1,792	7,899
Judiciary:				
Courts of appeals, district courts and other services	1,350	1,288	60	1,348
Defender services	128	87	41	128
Fees of jurors	59	55	4	59
Court security	58	43	15	58
Subtotal	1,595	1,473	120	1,593
Grand total	9,306	7,580	1,912	9,492

* Includes new or increased fees where appropriate.

TITLE I—DEPARTMENT OF COMMERCE

General Administration

SALARIES AND EXPENSES

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts language limiting official entertainment expenses to $2,000. The House bill contained no similar provision.

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment insert the following: *$28,173,000, of which not to exceed $1,467,000 shall be available for the Office of the General Counsel.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $28,173,000 instead of $28,429,000 as proposed by the House and $28,250,000 as proposed by the Senate. The conference agreement also includes a limitation of $2,000 for official entertainment as proposed by the Senate, and a limitation providing that funds available for the Office of General Counsel shall not exceed $1,467,000.

Office of the Inspector General

Amendment No. 3: Appropriates $13,500,000 as proposed by the Senate instead of $14,045,000 as proposed by the House.

Bureau of the Census

SALARIES AND EXPENSES

Amendment No. 4: Appropriates $101,288,000 as proposed by the Senate instead of $101,314,000 as proposed by the House.

The conference agreement appropriates $101,288,000 and provides for the requested adjustments to base and $425,000 requested for the National Trade Data Bank required by the Omnibus Trade and Competitiveness Act and $688,000 for classification of new businesses.

PERIODIC CENSUSES AND PROGRAMS

Amendment No. 5: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate making this appropriation available until expended. The House bill contained no similar provision.

Economic and Statistical Analysis

SALARIES AND EXPENSES

Amendment No. 6: Appropriates $31,150,000 as proposed by the Senate instead of $32,861,000 as proposed by the House.

The conference agreement reflects a net reduction of $1,711,000 from the budget request for requested program increases as follows: $927,000 to maintain the quality of GNP estimates; $450,000 to improve the business cycle of indicators; and $325,000 to improve balance of payment estimates.

Economic Development Administration

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

Amendment No. 7: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For economic development assistance as provided by the Public Works and Economic Development Act of 1965, as amended, and Public Law 91-304, and such laws that were in effect immediately before September 30, 1982, $191,196,000, of which, notwithstanding any other provision of law $11,350,000 shall be used to make or complete each grant designated in P.L. 100-459 in sub-sections (a), (c), (h), (i), (k), and (l) under the heading "Economic Development Assistance Programs" which has not been made and for which pre-application or applications have been filed: Provided, That during fiscal year 1990 total commitments to guarantee loans shall not exceed $150,000,000 of contingent liability for loan principal: Provided further, That none of the funds appropriated or otherwise made available under this heading may be used directly or indirectly for attorneys' or consultants' fees in connection with securing grants and contracts made by the Economic Development Administration: Provided further, That the Secretary of Commerce or his designees shall not promulgate or enforce any rule, regulation, or grant agreement provision affecting programs authorized by the Public Works and Economic Development Act of 1965, as amended, unless such rule, regulation, or provision is either required by statute or expressed as the explicit intent of the Congress or is in substantial conformity with those rules, regulations and provisions in effect prior to December 22, 1987.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides certain language provisions proposed by the Senate and $191,196,000 for Economic Development Assistance Programs instead of $194,482,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement also includes language not in either the House or Senate bill making funds available to make or complete certain grants for projects described in the FY 1989 Appropriations Act. The conferees understand that the Economic Development Administration did not make all of the grants provided for in the Appropriations Act for fiscal year 1989. The language contained in H.R. 2991 requires the agency to make or complete such grants, which are described in this bill under the heading "Economic Development Assistance Programs." The conferees intend that this provision shall not impede the ability of other applicants for EDA grants in the affected States to compete for such assistance.

The amount in the conference agreement shall be allocated as follows among the various EDA programs:

Fiscal year 1990 EDA program levels

Public works grants	$11,368,000
Planning assistance	22,995,000
Districts	(15,330,000)
Indians	(2,875,000)
States	(1,916,000)
Urban	(2,874,000)
Technical assistance	6,706,000
University centers	(4,790,000)
Research and evaluation	1,210,000
Economic adjustment grants	48,917,000
Sudden and severe projects	(36,714,000)
Revolving loan fund projects	(12,203,000)
Total	$191,196,000

SALARIES AND EXPENSES

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$25,475,000 of which not to exceed $494,000 shall be available for the Office of Chief Counsel*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $25,475,000 instead of $26,061,000 as proposed by the House and $25,500,000 as proposed by the Senate. The conference agreement also includes a limitation of $494,000 for the Office of Chief Counsel.

Amendment No. 9: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by said amendment insert the following: *Provided, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, as amended, title II of the Trade Act of 1974, as amended, and the Community Emergency Drought Relief act of 1977: Provided further, That notwithstanding any other provision of law, not to exceed $4,016,618 of the funds appropriated by this Act of "Economic Development Assistance Programs" shall be available for the purpose of paying the Economic Development Administration for any debt that arises due to the expenditure of funds under grant number 06-19-01498 as decribed in Inspector General Final Audit Report No. D-184-8-024 and that none of the funds appropriated by this Act shall delay or otherwise adversely affect any grant application for fiscal year 1990 by the City of Chicago as a result of negotiations on the grant described in such audit report: Provided further, That none of the funds appropriated by this Act shall be available to enable the Economic Development Administration, Department of Commerce, to delay or otherwise adversely affect any grant application for fiscal year 1990 by the State of Oregon, or to which the State of Oregon will contribute funds, on the basis that the contribution by the State of Oregon does not conform with law or regulation. Notwithstanding any other provision of this Act of any other*

law, funds appropriated in this paragraph shall be used to fill and maintain forty-nine permanent positions designated as Economic Development Representatives out of the total number of permanent positions funded in the Salaries and Expenses account of the Economic Development Administration for fiscal year 1990, and such positions shall be maintained in the various States within the approved organizational structure in place on December 1, 1987, and where possible, with those employees who filled those positions on that date: Provided further, That none of the funds may be used to formulate or implement any action, activity, guideline, program, project, policy or regulation which alters the practice of making grants directly to planning and development districts which was in effect on December 31, 1988, or which results in denial of funding to any planning and development district on the basis of the number of years such district has received economic development assistance program funding or on the basis of the geographic area such district encompasses or on the basis of the population situated in the geographic area such district encompasses or a combination of any of these factors.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate and carried in prior year acts with regard to monitoring projects of previous appropriations and requiring the maintenance of 49 permanent positions designated as Economic Development Representatives. The conference agreement also includes language proposed by the Senate which prohibits EDA from refusing to allow the State of Oregon to use State funds as a match for public works grants. The House bill contained no similar provision.

The conference agreement also designates not to exceed $4,016,618 to relieve a grantee of adverse financial consequences which are due in part to actions by EDA officials. The conferees believe that it is therefore appropriate that the relief granted should come from the current EDA appropriation. The designation of these funds for this purpose amounts to an accounting transaction which when completed will free these funds for carrying out the purposes of the national economic development assistance program. The Senate provision on this matter would have prohibited the Economic Development Administration from implementing any of the recommendations in the Inspector General's Audit Report on the subject grant. The House bill contained no similar provision.

The conference agreement also includes a provision which was not included in either the House or Senate bills which prohibits the use of funds to formulate or implement any action or policy which alters the practice of making grants directly to planning and development districts which was in effect on December 31, 1988, or which results in denial of funding to any planning and development district on the basis of the number of years a district has received EDA program funds. This prohibition will prevent arbitrary rejection of planning grant applications from such districts on criteria not related to the district's performance and will prevent altering the funding procedure which makes the money available directly to the districts without passing through any intervening, non-federal entity.

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

Amendment No. 10: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment providing certain lanugage concerning the use of ITA funds including provisions regarding the U.S.-Canada Free-Trade Agreement. The House bill contained no similar provision.

Amendment No. 11: Appropriates $181,296,000 as proposed by the Senate instead of $179,579,000 as proposed by the House.

The Conference agreement includes the full $6,000,000 increase requested for the U.S. and Foreign Commercial Service; $500,000 for Chapter 18 panels; $3,360,000 for the Tailored Clothing Technology Corporation; $3,000,000 for continuation of a grant for a new materials center; $2,304,000 for adjustments to base; and a total of $10,877,000 for the Trade Adjustment Assistance Program of which $4,605,000 is new budget authority and $6,272,000 is unobligated balances from prior years.

Amendment No. 12: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following: *to remain available until expended, of which $3,000,000 shall be for support costs of a new materials center in Ames, Iowa: Provided, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities; and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment of assessments for services provided as part of these activities.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts certain language contained in the Senate amendment making the appropriation available until expended, and providing for certain activities of the Mutual Educational and Cultural Exchange Act, and new language not in either the House or Senate bills earmarking $3,000,000 for support costs for a new materials center in Ames, Iowa. The House bill contained no similar provisions.

Amendment No. 13: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of matter proposed by said amendment insert the following: *: Provided further, That of the funds provided in this Act or any previous Acts for the International Trade Administration Trade Adjustment Assistance Program including those amounts provided in advance to recipient organizations which remain unexpended or which have been obligated or reserved for fiscal year 1990 expenses, including close out costs, by those organizations as of October 1, 1989, not to exceed $10,877,000 shall be available for the Trade Adjustment Assistance Program during fiscal year 1990. Notwithstanding any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: Provided further, That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed eight.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides language which earmarks not less than $10,877,000 for the Trade Adjustment Assistance Program including amounts provided in advance to recipient organizations which remain unexpended or which have been obligated or reserved for FY 1990 expenses, including closeout costs. The Senate provision would have earmarked this amount for the Trade Adjustment Assistance Program including amounts provided in advance to recipient organizations. The House bill contained no smiliar provision.

The conferees direct the Secretary to provide a report identifying the sources of the $10,877,000 required for the Trade Adjustment Assistance Program by January 31, 1990 to the House and Senate Appropriations Subcommittees on Commerce, Justice, and State, the Judiciary and Related Agencies. The report should specify amounts available from unobligated ITA carryover, prior or current year deobligations recovered by ITA, and unexpended balances held by recipient organizations or which have been obligated or reserved by recipient organizations, including close out costs. The conferees intend that reserves held for closeout costs be available for programmatic purposes.

The conference agreement also includes language providing for the designation of the diplomatic title of Minister-Counselor to the senior commercial officer assigned to any United States mission abroad. The House bill contained no similar provision.

EXPORT ADMINISTRATION

OPERATIONS AND ADMINISTRATION

Amendment No. 14: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$41,800,000" named in said amendment insert the following: *$42,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $42,000,000 for the Export Administration instead of $41,800,000 as proposed by the Senate and provides certain language provisions which were contained in the Senate amendment. The House bill contained no similar provisions.

The conference agreement earmarks $1 million for the establishment of regional offices in the Portland, Oregon, the Boston, Massachusetts/Nashua, New Hampshire, and northern California areas. it is the intent of the conferees that these new offices perform the same services and activities as the Western Regional Office located in Southern California and that these offices be adequately staffed to perform these services. The conferees expect the staffing of these regional offices to reflect the estimated workload in the areas which they serve. The conferees expect the Bureau to act expeditiously to ensure that these offices are open in FY 1990.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

Amendment No. 15: Reported in technical disagreement. The managers on the part of

the House will offer a motion to recede and concur in the Senate amendment which appropriates $39,741,000. The House bill contained no similar provision.

The conference agreement provides $39,741,000 for the Minority Business Development Agency of which $25,321,000 as proposed by the Senate shall be available until expended. The conference agreement also includes language contained in the Senate amendment providing for a limitation of $14,420,000 on funds available for program management in fiscal year 1990. The House bill contained no similar provisions.

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 16: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $14,300,000. The House bill contained no similar provision.

The conference agreement provides $14,300,000 as proposed by the Senate for the United States Travel and Tourism Administration and provides certain language proposed by the Senate governing the use of funds. The House bill contained no similar provisions.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

Amendment No. 17: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts language with regard to commissioned officers. The House bill contained no similar provision.

Amendment No. 18: Deletes language proposed by the Senate regarding acquisition of land for facilities. This matter is addressed in Amendment No. 19.

Amendment No. 19: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$1,214,607,000, to remain available until expended, of which $1,500,000 shall be available for construction and renovation of facilities at the Stuttgart Fish Farming Experimental Station, Stuttgart, Arkansas; and of which $550,000 shall be available for operational expenses at the Stuttgart Fish Farming Experimental Station, Stuttgart, Arkansas; and of which $377,000 shall be available only for a semi-tropical research facility located at Key Largo, Florida; and in addition, $30,000,000 shall be derived from the Airport and Airways Trust Fund as authorized by 49 U.S.C. 2205(d); and in addition, $55,000,000 shall be derived by transfer from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries"; and in addition, $4,500,000 shall be derived by transfer from the Coastal Energy Impact Fund: Provided, That grants to States pursuant to section 306 and 306(a) of the Coastal Zone Management Act, as amended, shall not exceed $2,000,000 and shall not be less than $450,000: Provided further, That in addition to the sums appropriated elsewhere in this paragraph, not to exceed $500,000 shall be available from the receipts deposited in the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries" for grant management and related activities: Provided further, That for fiscal year 1990 and hereafter funds appropriated under this heading shall be available for acquisition of land for facilities*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $1,214,607,000 instead of $966,932,000 as proposed by the House and $1,216,830,000 as proposed by the Senate.

The conference agreement also includes earmarkings totalling $1,500,000 for construction, renovation and operation of facilities at the Stuttgart Fish Farming Experimental Station, a transfer of $30,000,000 from the Airport and Airways Trust Fund, a transfer of $4,500,000 from the Coastal Energy Impact Fund, each of which was proposed by the Senate. The House bill contained no similar provisions.

The conference agreement also includes a transfer of $55,000,000 from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries", instead of $51,900,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement also makes available not to exceed $500,000 from the receipts deposited in the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries" for grant management and not less than $450,000 and not to exceed $2,000,000 for grants to states under the Coastal Zone Management Act, as proposed by the Senate. The House bill contained no similar provisions.

The conference agreement provides $6,400,000 for the coastal ocean initiative of which the conferees expect that $350,000 will be allocated to the University of South Carolina School of Public Health and the Baruch Institute for research to effectively manage small, high-salinity estuaries, in collaboration with the National Marine Fisheries Service Southeastern Fisheries Laboratory in Charleston, SC.

The conference agreement also includes an earmarking not included in either the House or Senate bill of $377,000 to support continuation of work at a semi-tropical research facility located at Key Largo, Florida.

The conference agreement also includes a permanent provision regarding the acquisition of land for facilities. The Senate bill included this language in Amendment No. 18 but did not make this a permanent provision. The House bill contained no similar provision.

The conferees expect that the necessary funds will be made available in fiscal year 1990 for the National Undersea Research Program to continue to conduct important studies off the coast of New Jersey to determine the environmental impact of the 106-mile deepwater municipal sludge site (Deepwater Dumpsite 106).

The conferees direct that the cooperative institute for remote sensing at Dartmouth College shall be funded in FY 1990 at no less than the same level provided in FY 1989.

The conferees have provided $2,500,000 for damage assessment activities, including an examination of the effects on the marine environment of the oil spill in Prince William Sound in Alaska.

The conference agreement provides that $125,000 of the funds provided for ocean services are to be made available to establish scientific support in the Great Lakes area through NOAA's Great Lakes Environmental Research Laboratory in Ann Arbor, Michigan and supporting facilities in Milwaukee and Madison, Wisconsin and $250,000 for the Narragansett, Rhode Island and Beaufort, North Carolina facilities.

The conferees agree that out of the funds provided for Landsat 6, $250,000 shall be available for the University of Oklahoma's Cooperative Institute for Applied Remote Sensing.

The conference agreement provides funding for the Gloucester Lab at the FY 1989 level plus an appropriate adjustment for inflation.

The conference agreement provides the following amounts:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

[Dollars in thousands]

Activity/Subactivity/Item	Fiscal year 1989 appropriation	Pres. request	House mark	Senate mark	Conference
NATIONAL OCEAN SERVICE					
Mapping, Charting and Geodesy	$44,869	$44,981	$45,834	$47,494	$48,494
Vertical Control Network	3,244	3,044	3,244	3,044	3,044
S.C. Multipurpose Mapping Project	377	0	377	577	577
ANCS II	0	1,660	0	1,660	1,660
Multipurpose Cadastre	1,836	0	1,836	1,836	1,836
Great Lakes Mapping Project	100	0	100	100	100
Tampa Bay Mapping Project					1,000
Observation and Assessment	30,028	40,333	36,823	41,323	40,159
Circulatory Program	777	377	777	577	777
Ocean Services	3,711	3,711	3,711	4,211	4,586
Ocean Assessments	11,298	10,259	11,298	13,759	13,759
California Data Bouys	151	0	151	151	151
Coastal Ocean Initiative	n/a	12,400	6,400	8,139	6,400
Wetland Management Demo Project	900	0	900	900	900
Ocean and Coastal Management	43,313	6,331	41,852	45,531	47,031
306 Grants	33,000	0	33,000	34,000	34,000
309 Grants	942	0	942	400	400

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—Continued

[Dollars in thousands]

Activity/Subactivity/Item	Fiscal year 1989 appropriation	Pres. request	House mark	Senate mark	Conference
Program Management	2,779	1,779	2,779	3,279	3,279
Estuarine Sanctuary Acquistions	2,790	1,190	2,790	3,490	3,490
Marine Sanctuary Management	2,626	2,122	2,626	3,122	3,122
Purchase of Buxton Woods					1,500
Total, NOS	118,210	91,645	124,509	134,348	135,684
NATIONAL MARINE FISHERIES SERVICE					
Information Collection and Analyses	102,674	65,177	8,671	108,151	107,654
Resources Surveys and Technology	18,167	16,167	7,499	18,167	18,167
New England Stock Res.	650	0	0	650	650
Protected Species	2,913	1,713	1,200	2,913	2,913
Habitat Research	12,389	7,256	0	12,389	12,389
Fish Statistics	9,759	6,840	1,072	9,759	9,759
Analyses of Ecosystems	18,912	17,995	0	18,912	18,912
Aquaculture	4,344	0	0	4,775	4,775
Chesapeake Bay Studies	1,600	0	0	1,600	1,600
SEAMAP	942	0	0	942	942
MARFIN	3,000	0	0	4,000	3,000
West Coast Groundfish	847	0	0	847	847
Right Whale Research	235	0	235	235	235
Marine Mammal Research	4,521	3,015	4,521	4,765	4,765
Gear Entanglement	706	0	0	706	706
Habitat Evaluation	471	0	0	471	471
Sub-Arctic Fisheries	753	0	0	0	753
Hawaii Stock Management Plan	400	0	0	400	400
Yukon River Chinook Study	235	0	0	235	235
Japanese Salmon Interception	141	0	0	0	0
Alaska Salmon Enhancement	3,766	0	0	3,766	3,766
Pacific Salmon Treaty	4,708	0	0	4,708	4,708
Antarctic Research	1,300	0	0	1,300	1,300
Lake Mead Limnological Research	400	0	0	0	0
Tiburon Lab Transfer	94	0	0	0	0
Atlantic Salmon Research	250	0	0	500	500
Oyster Disease Research	500	0	500	0	500
PACFIN	n/a	n/a	n/a	1,000	1,000
Bering Sea Pollack Research	n/a	n/a	n/a	750	0
Woods Hole Fisheries Lab-Bulkhead and Dock	n/a	n/a	n/a	2,000	2,000
Alaska Whale Reimbursement	n/a	n/a	n/a	170	170
Conservation and Management Operations	48,564	30,019	5,695	60,610	60,410
Regional Councils	7,233	3,467	0	7,233	7,233
Columbia River Hatcheries	9,300	0	0	9,300	9,300
Manage Georges Bank Fisheries	471	0	0	471	471
Habitat Conservation	5,412	3,529	0	5,412	5,412
Oregon Harbor Seals and Sea Lions	36	0	36	36	36
Endangered Species Recovery Plan	235	0	235	235	235
St. Paul Trust Fund	1,700	0	1,700	1,700	1,600
St. George Trust Fund	n/a	n/a	n/a	1,200	1,100
MMPA Implementation	n/a	n/a	n/a	7,500	7,500
Driftnet Act Implementation	n/a	n/a	n/a	3,000	3,000
Enforcement and Surveillance	n/a	n/a	n/a	1,500	1,500
State and Industry Assistance Program	18,516	4,220	7,155	18,935	18,623
Interjurisdictional Fisheries Grants to States	3,500	0	3,500	3,500	3,500
Anadromous Grants	2,354	0	2,354	2,354	2,354
Striped Bass Research	471	0	471	471	471
Interstate Fisheries Commission	330	0	330	330	330
Fisheries Trade Promotion Activities	1,388	0	0	1,388	1,388
Product, Quality, and Safety Research	8,620	4,220	0	8,620	8,620
Fish Oil Research	942	0	0	942	942
Seafood Inspection Program	330	0	0	330	330
Mahi Mahi Strategy	188	0	0	0	188
Shellfish Water Standards Research	500	0	500	1,000	500
Total, NMFS	169,754	99,416	21,521	187,696	186,687
OCEANIC AND ATMOSPHERIC RESEARCH					
Climate and Air Quality Research	45,819	53,339	48,997	53,389	53,389
TOGA	4,966	4,966	4,966	4,966	4,966
Regional Climate Centers	2,592	1,092	2,592	2,892	2,892
NCPO International Climate Panel	250	0	250	250	250
Climate and Global Change	9,000	20,000	15,000	18,000	18,000
Atmospheric Programs	40,850	40,537	44,533	44,633	44,633
State Weather Modification	2,213	0	2,213	2,213	2,123
PROFS	3,766	1,883	3,766	3,766	3,766
Severe Storm/Mesoscale	5,556	5,600	5,556	5,600	5,600
Ocean and Great Lakes Programs	70,323	11,156	70,514	70,533	74,819
Sea Grant College Program	39,000	0	39,000	41,000	41,000
National Coastal R&D Institute	1,177	0	1,177	1,177	1,177
Asian Aquaculture Exchanges	282	0	0	0	282
NOAA Undersea Research Program (NURP)	14,285	0	14,285	11,600	14,285
Semi-Tropical Key Largo Research Facility	377	0	377	0	377
CLERL	4,772	3,172	4,772	4,772	4,772
VENTS (Newport, Oregon)	1,695	0	1,695	2,000	2,000
FOCI	942	0	942	0	942
Univ. of New Hampshire Marine Research	n/a	n/a	n/a	2,000	2,000
Total, OAR	156,992	105,032	164,044	168,555	172,841
NATIONAL WEATHER SERVICE					
Operations and Research	282,527	252,822	288,959	287,839	287,839
Staff at 8 WSFO's	787	0	787	787	787
Southern Regional Headquarters	12,850	11,998	12,850	12,850	12,850
Pacific and Alaska Regional Headquarters	4,200	3,817	4,200	4,200	4,200
Data Bouy Activities	14,665	13,560	14,665	14,665	14,665
Fire Weather	1,582	1,300	1,582	1,582	1,582
Agriculture and Fruit Frost Warnings	1,335	0	1,335	1,335	1,335
OR and WA Mountain Weather Services	n/a	n/a	n/a	200	200
Susquehanna River Flood Warning System	700	0	700	700	700
Colorado River Basin, Flood Warning System	300	0	300	300	300
Meteorological/hydrological Research	2,576	2,394	2,714	2,394	2,394
MARD	1,000	0	1,000	0	0

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—Continued

[Dollars in thousands]

Activity/Subactivity/Item	Fiscal year 1989 appropriation	Pres. request	House mark	Senate mark	Conference
Base Reductions	n/a	0	29,073	29,073	239,073
Systems Acquisition	61,150	107,792	62,925	101,425	101,425
AWIPS	13,500	5,000	5,000	13,500	13,500
ASOS	6,250	8,725	8,725	8,725	8,725
NEXRAD	41,400	86,267	41,400	71,400	71,400
NMC Computer	n/a	7,800	7,800	7,800	7,800
Total, NWS	343,677	360,614	351,884	389,264	389,264
NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICE					
Satellite Observing Systems	362,910	262,394	207,040	244,545	245,220
Polar Systems	63,129	21,533	21,533	15,184	15,184
LANDSAT Commercialization	20,400	36,900	0	34,900	34,900
LANDSAT Operations	6,400	19,000	0	9,500	9,500
NOAAPORT	2,000	0	0	0	0
EROS Data Center	3,000	0	0	0	0
Environmental Data Management System	20,399	20,715	20,715	20,715	20,715
Marine Electronics Agenda					675
Total, NESDIS	383,309	283,109	227,755	265,260	265,935
PROGRAM SUPPORT					
Administration and Services	59,509	60,994	60,794	60,994	60,794
Facilities	471	4,082	471	4,082	1,221
Maintenance of Beaufort, NC. Lab					200
Marine Services	59,910	53,635	59,910	60,910	59,910
Aircraft Services	7,260	8,121	7,571	8,121	7,571
Total, PROSUP	126,210	126,832	128,746	134,107	129,696
SUBTOTAL, ORF (TOTAL REQUIREMENTS)	1,298,152	1,066,648	1,018,459	1,279,230	1,280,107
Reduced Adjustments to Base	[1] 0	[2] 0	7,073	[2] 0	0
Total ORF Requirements for FY 1990	1,298,152	1,066,048	1,025,532	1,279,230	1,219,607
Transfer from CEIF	(6,500)	(8,500)	(4,600)	(4,500)	(4,500)
Deobligations	(6,000)	(6,000)	(4,000)	(6,000)	(6,000)
Budget Authority	1,285,652	1,052,148	1,016,932	1,268,730	1,269,607
Transfer S/K	(45,600)	(53,700)	(50,000)	(51,900)	55,000
Appropriation Subtotal (General Fund)	1,240,052	998,448	966,932	1,216,830	1,214,607
Monies set aside for unauthorized programs			171,423		
Appropriations (General Fund)			1,138,355		

[1] $12,378,000 reduction is incorporated into line office totals.
[2] $67,032,000 reduction is incorporated into line office totals.

FISHERIES PROMOTIONAL FUND

Amendment No. 20: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which makes available until expended $2,000,000 of the funds deposited in the Fisheries Promotional Fund as proposed by the Senate. The House bill contained no similar provision.

FISHING VESSEL AND GEAR DAMAGE FUND

Amendment No. 21: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a provision making the appropriation available until expended. The House bill contained no similar provision.

FISHERMEN'S CONTINGENCY FUND

Amendment No. 22: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a provision making the appropriation available until expended. The House bill contained no similar provision.

FOREIGN FISHING OBSERVER FUND

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a provision making the appropriation available until expended. The House bill contained no similar provision.

PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

Amendment No. 24: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts language making the appropriation available for defense of suits instituted against the Commissioner of Patents and Trademarks. The House bill contained no similar provision.

Amendment No. 25: Appropriates $85,900,000 as proposed by the Senate instead of $101,912,000 as proposed by the House.

Amendment No. 26: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a provision making the appropriation available until expended. The House bill contained no similar provision.

TECHNOLOGY ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 27: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$3,900,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $3,900,000 for the Technology Administration instead of $4,100,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement will provide for 20 of the 26 additional positions requested for FY 1990.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

Amendment No. 28: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the core programs of the National Institute of Standards and Technology, $144,809,000, to remain available until expended, of which not to exceed $3,430,000 may be transferred to the "Working Capital Fund"; and of which not to exceed $1,300,000 shall be available for construction of research facilities; and in addition for grants for regional centers for the transfer of manufacturing technology as authorized by section 5121 of the Omnibus Trade and Competitiveness Act of 1988, $7,500,000, to remain available until expended; and in addition for expenses of the Advanced Technology Program as authorized by section 5131 of the Omnibus Trade and Competitiveness Act of 1988, $10,000,000, to remain available until expended; and in addition for technology transfer extension services pursuant to section 5121 of the Omnibus Trade and Competitiveness Act of 1988, $1,300,000, to remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $163,609,000 for the National Institute of Standards and Technology of which $144,809,000 is for core programs, $7,500,000 is for regional centers for manufacturing technology, $10,000,000 is for the Advanced Technology Program, and $1,300,000 is for technology transfer extension services. The Senate bill would have provided $175,600,000 without any of the designations in the conference agreement. The conference agreement also provides for the transfer of up to $3,430,000 to the Working Capital Fund and provides for $1,300,000 for construction of research facilities as proposed by the Senate. The House bill contained no similar provisions.

The conference agreement provides $144,809,000 for the core programs of NIST including $809,000 for adjustments to base and $4,372,000 for the Centers for Fire Research and Buildings Technology.

The conferees direct NIST to continue and expand its interactions with private and State organizations that have particular expertise in manufacturing and small business, including educational institutions knowledgeable about an incremental approach to industrial technology as well as State technology programs and small business assistance programs.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 29: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $14,200,000. The House bill contained no similar provision.

The conference agreement appropriates $14,200,000 for the National Telecommunications and Information Administration of which $700,000 shall remain available until expended as proposed by the Senate.

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION

Amendment No. 30: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment insert the following: *$20,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $20,000,000 instead of $20,449,000 as proposed by the House and $20,200,000 as proposed by the Senate.

Amendment No. 31: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following: *: Provided further, That notwithstanding the provisions of section 391 of the Communications Act of 1934, as amended, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate had proposed language making prior year unobligated balances available for grants for projects for which applications have been submitted and approved during any fiscal year and which earmarked $200,000 for the Pan-Pacific Education and Cultural Experiments by Satellite program (PEACESAT). The conference agreement retains the Senate language concerning prior year unobligated balances and deletes the language earmarking funds for PEACESAT. The House bill contained no similar provision.

NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

Amendment No. 32: Deletes language proposed by the Senate which would have provided $2,500,000 for the National Endowment for Children's Education Television. The House bill contained no similar provision.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

Amendment No. 33: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts language making Commerce Department funds in this Act available for advanced payments only upon certification of officials designated by the Secretary that such payments are in the public interest. The House bill contained no similar provision.

Amendment No. 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts Sec. 103 prohibiting the use of Commerce Department funds to sell to private interests, except with the consent of the borrower, or to contract with private interests to sell or administer any loans made under the Public Works and Economic Development Act of 1965 or any loans made under section 254 of the Trade Act of 1974. The House bill contained no similar provision.

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a permanent provision, Sec. 104, authorizing the National Institute of Standards and Technology to accept contributions of funds from any public or private source to construct a facility for cold neutron research on materials, and provides that these funds be made available until expended. The House bill contained no similar provision.

Amendment No. 36: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts Sec. 105 prohibiting the use of funds in this title from being used to reimburse the Commerce Department's Working Capital Fund for programs, projects or activities which had not been performed as a central service out of the Fund before July 1, 1982 unless the House and Senate Appropriations Committees are notified under said Committees' reprogramming procedures. The House bill contained no similar provision.

Amendment No. 37: Deletes language proposed by the Senate requiring the Secretary of Commerce to participate in international efforts with respect to standardized techniques for calculating national income accounts. The House bill contained no similar provision.

The conferees expect that the Secretary of Commerce shall participate fully in international efforts to develop standardized techniques for calculating national income accounts that recognize the negative impact that degradation of natural resources can have on long term economic development. The conferees also agree that the Secretary should seek to adopt the use of such standards and make an annual calculation of Gross Sustainable Productivity in the U.S. to be issued in conjunction with the release of annual Gross National Product figures.

TITLE II—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 38: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$87,439,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $87,439,000 for General Administration, instead of $90,664,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement of $87,439,000, when added to the $10,261,000 included in title IV of H.R. 3015, provides a total appropriation of $97,700,000 for General Administration for fiscal year 1990.

The amount available of $97,700,000 provides for requested adjustments to base and built-in changes and program changes, as follows: an increase of 58 positions and $2,164,000 for the Executive Office of Immigration Review (EOIR) to expedite processing of criminal aliens as requested in the President's initiative to combat violent crime; an increase of 9 positions and $2,475,000 for continuation of the Private Counsel for Debt Collection initiative; and the requested program reduction of 4 positions and $170,000 from the Offices of Public Affairs and Legislative Affairs. The conference agreement accepts the Department of Justice's proposal that staffing for the Office of Public Affairs should not exceed 11 full-time permanent positions (12 full-time equivalent workyears) and the Office of Legislative Affairs should not exceed 18 full-time permanent positions (21 full-time equivalent workyears).

The conferees agree that telemarketing fraud is a serious national problem which deserves priority attention by law enforcement agencies. The conferees expect the Justice Department to provide a report, within six months of enactment of this bill, on the number and status of investigations and prosecuted cases of telemarketing fraud within the preceding three years, including a description of the nature and type of scheme, the amount of financial resources expended and personnel committed during this period to investigate and prosecute fraudulent telemarketers. This report should also include a detailed evaluation of existing criminal laws and their adequacy in addressing telemarketing fraud, especially involving the use of credit cards.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

Amendment No. 39: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $20,673,000 and includes language which allows for up to $10,000 to

meet unforeseen emergencies of a confidential character, and allows for acquisition, lease, maintenance and operation of motor vehicles without regard to purchase price limitations. The House bill contained no similar provision.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

Amendment No. 40: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert *$10,500,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $10,500,000 for the United States Parole Commission instead of $10,261,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement provides an increase of $239,000, 5 full-time positions and 5 FTE above the FY 1990 request.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

Amendment No. 41: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed $20,000 for expenses of collecting evidence, to be expended under the direction of the Attorney General and accounted for solely on his certificate; and rent of private or Government-owned space in the District of Columbia; $257,000,000, of which not to exceed $5,751,000 shall be available for the operation of the United States National Central Bureau, INTERPOL; and of which not to exceed $6,000,000 for litigation support contracts shall remain available until September 30, 1991: Provided, That of the funds available in this appropriation, not to exceed $12,160,000 shall remain available until expended for office automation systems for the legal divisions covered by this appropriation, and for the United States Attorneys, the Antitrust Division, and offices funded through Salaries and expenses, General Administration: Provided further, That for fiscal year 1990 and hereafter the Chief, United States National Central Bureau, INTERPOL, may establish and collect fees to process name checks and background records for noncriminal employment, licensing, and humanitarian purposes and, notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services: Provided further, That for fiscal year 1990 and hereafter the Attorney General may establish and collect fees to cover the cost of indentifying, copying and distributing copies of tax decisions rendered by the Federal Judiciary and that any such fees shall be credited to this appropriation notwithstanding the provisions of 31 U.S.C. 3302: Provided further, That, notwithstanding any other provision of law, not to exceed $1,000,000 for expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986 shall be reimbursed from the special fund established to pay judgements awarded under the Act.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $257,000,000, for General Legal Activities, instead of $262,491,000 as proposed by the Senate and inserts new language which provides for the transfer of $1,000,000 from the Vaccine Injury Trust Fund to this account to fund processing of cases. The House bill contained no similar provisions.

The conference agreement also includes language proposed by the Senate, but not in the House bill, which allows up to $6,000,000 for litigation support contracts to remain available until September 30, 1991, provides up to $5,751,000 instead of the $4,882,000 proposed by the Senate for operation of the United States National Central Bureau, INTERPOL, and provides a permanent provision proposed by the Senate allowing INTERPOL to establish and collect fees, and earmarks $12,160,000 instead of the $6,474,000 proposed by the Senate for office automation systems to remain available until expended. Language proposed by the Senate is also included to allow the Attorney General to establish and collect fees for tax decisions. The House bill contained no similar provisions.

The conference agreement of $258,000,000, when added to the $41,476,000 included in Title IV of H.R. 3015 provides a total availability of $299,476,000 for General Legal Activities for fiscal year 1990.

The total amount available of $299,476,000 provides for requested adjustments to base and built-in changes and for program growth as follows: $3,278,000 for financial institution fraud investigations; $5,400,000 for the President's violent crime initiative; $7,852,000 for automated litigation support in the Civil and Lands Divisions, $1,700,000 for the Civil Rights Division for processing claims under the Civil Liberties Act of 1988 (the total amount available for this purpose in FY 1990 is $4,284,000); $869,000 for INTERPOL-USNCB; $5,686,000 for legal activities office automation; $1,000,000 for the Office of Special Counsel; and $1,000,000 for vaccine injury-related claims.

Immigration Related Discrimination.—The Immigration Reform and Control Act of 1986 intended that employers and prospective job applicants be familiar with both worker verification and anti-discrimination requirements of that Act. The conferees believe that one of the most significant tasks of the Office of Special Counsel for Unfair Immigration-related Employment Practices is to inform employers of their obligations and job applicants of their rights under the 1986 Act. Therefore, the conferees intend that of the funds available to the Department of Justice for General Legal Activities, no less than $1,000,000 be available for use by the Office of Special Counsel for publicizing both the obligations of employers and the rights of job applicants under section 102 of the Immigration Reform and Control Act of 1986.

Vaccine Injury Claims.—The Department of Justice has the responsibility for representing the Government in vaccine injury-related claims that are filed under the National Vaccine Injury Compensation Program. The conference agreement includes a transfer of $1,000,000 from the Vaccine Injury Compensation Trust Fund to General Legal Activities to provide sufficient resources for the Department to proceed with their responsibility.

Crittenden County, Ark.—The conferees are aware of the extensive efforts undertaken by the Sheriff of Crittenden County, Arkansas and other county officials to rectify conditions in the county jail which have been the subject of a review by the U.S. Department of Justice pertaining to the safety, protection and welfare of the inmates incarcerated therein. The conferees are gratified to note the progress made to date through the commissioning and completion of a proposal for the planning and feasibility of a joint city of West Memphis and Crittenden County, Arkansas Justice Complex. The conferees encourage the U.S. Department of Justice to assist the Crittenden County Sheriff in identifying the resources necessary to move this facility towards conformance with constitutional and statutory requirements pursuant to the civil rights of institutionalized persons.

CIVIL LIBERTIES PUBLIC EDUCATION FUND

Amendment No. 42: Deletes language proposed by the House appropriating $50,000,000 for redress payments to certain eligible Japanese Americans.

Amendment No. 43: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

Subject to the provision of section 104(e) of the Civil Liberties Act of 1988 (Public Law 100-383; 50 U.S.C. App. 1989-b-3(e)), the maximum amount authorized under such section for any fiscal year is appropriated, from money in the Treasury not otherwise appropriated, for each fiscal year beginning on or after October 1, 1990, to the Civil Liberties Public Education Fund established by section 104(a) of the Civil Liberties Act of 1988, for payments to eligible individuals under section 105 of that Act.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate, with new technical amendments, which provide that beginning on October 1, 1990, and continuing each fiscal year thereafter, such sums as are necessary shall be appropriated for payments to eligible individuals entitled to redress payments. The House bill contained no similar provision. Under the conditions of the Civil Liberties Act, no more than $500,000,000 can be appropriated to the Civil Liberties Public Education Fund in fiscal year 1991.

SALARIES AND EXPENSES, ANTITRUST DIVISION

Amendment No. 44: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert: *$32,222,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $32,222,000 for the Antitrust Division during fiscal year 1990, instead of $42,222,000 as proposed by the Senate. The House bill contained no similar provision. The conference agreement also assumes the availability of $20,000,000 in premerger notification filing fees created by Section 605 of this Act.

The conference agreement provides for an increase of $5,000,000 over the budget request. These additional resources shall be allocated to the Termination and Prevention of Private Cartel Behavior Program to expand the Antitrust Division's criminal investigation of bid-rigging and price-fixing cases; and care management system; and for the Preservation of Competitive Market Structure Program to open and close additional preliminary inquiries and more merger cases. The House bill contained no similiar provision.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

Amendment No. 45: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $444,862,000. The House bill contained no similar provision.

The conference agreement provides $444,862,000 for the United States Attorneys for fiscal year 1990 as proposed by the Senate. The conference agreement also includes language proposed by the Senate which provides up to $5,000,000 to remain available until September 30, 1991 for training of personnel in debt collection and costs associated with locating and collecting debts and $8,000 for official reception and representation expenses. The House bill contained no similar provisions.

The conference agreement of $444,862,000, when added to the $80,699,000 included in Title IV of H.R. 3015, provides a total of $525,561,000 for U.S. Attorneys for FY 1990. The total amount available of $525,561,000 provides for requested adjustments to base and built-in changes and program increases as follows: $48,078,000 for the President's violent crime initiative; $20,862,000 for financial institution fraud investigations; and $5,000,000 for debt collection.

UNITED STATES TRUSTEE SYSTEM FUND

Amendment No. 46: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $60,729,000 and includes language which allows the Trustees to pay refunds due depositors. The House bill contained no similar provisions.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

Amendment No. 47: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, $440,000: Provided, That for fiscal year 1990 and hereafter, funds appropriated under this heading shall be available for: allowances and benefits similar to those allowed under the Foreign Service Act of 1980 as determined by the Commission; expenses of packing, shipping, and storing personal effects of personnel assigned abroad; rental or lease, for such period as may be necessary, of office space and living quarters of personnel assigned abroad, maintenance; improvement, and repair of properties rented or leased abroad, and furnishing fuel, water, and utilities for such properties; insurance on official motor vehicles abroad; advances of funds abroad; advances or reimbursements to other Government agencies for use of their facilities and services in carrying out the functions of the Commission; hire of motor vehicles for field use only; and employment of aliens.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $440,000, as proposed by the Senate, the amount requested for the Commission for fiscal year 1990. The conference agreement also includes a new permanent provision which allows the Commission to provide allowances and benefits for Commission personnel overseas similar to those allowed under the Foreign Service Act of 1980. The House bill contained no similar provisions.

SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

Amendment No. 48: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $217,027,000. The conference agreement also includes language proposed by the Senate which provides a permanent provision giving the Director of the U.S. Marshals Service authority to collect fees and credit these fees to this appropriation, provides $6,000 for official reception and representation expenses and allows for acquisition and operations of vehicles and aircraft. The House bill contained no similar provisions.

The conference agreement of $217,027,000, when added to the $23,819,000 included in Title IV of H.R. 3015, provides a total appropriation of $240,846,000 for the Marshals Service for FY 1990.

The total amount available of $240,846,000 provides for adjustments to base and built-in changes and program increases as follows: $10,000,000 for the President's violent crime initiative; $4,200,000 for Judicial Security; $2,080,000 for Handling of Federal Prisoners; and $900,000 for ADP and Telecommunications.

SUPPORT OF UNITED STATES PRISONERS

Amendment No. 49: Reported in tecnical disagreement. The managers on the part of the House will offer a motion to reced and concur in the Senate amendment which appropriates $137,034,000 and includes language earmarking $5,000,000 for the Cooperative Agreement Program. The House bill contained no similar provisions.

The conference agreement of $137,034,000 when added to the $23,000,000 included in title IV of H.R. 3015, provides a total appropriation of $160,034,000 for support of U.S. Prisoners for FY 1990. The total amount available of $160,034,000 provides for requested adjustments to base and built-in changes and program increases of $15,000,000 for the Cooperative Agreement Program and $39,034,000 for care of prisoners.

FEES AND EXPENSES OF WITNESSES

Amendment No. 50: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates the requested $56,784,000 for Fees and Expenses of Witnesses and includes new permanent language allowing the Department to enter into reimbursable agreements to pay private counsel to defend Federal employees and allowing the receipt of reimbursement for the cost of expert witnesses from litigating organizations. The House bill contained no similar provisions.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

Amendment No. 51: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $29,334,000 and limits to $21,500,000 the amount available for the processing, care and placement of Cuban and Haitian entrants. The House bill contained no similar provisions.

ASSETS FORFEITURE FUND

Amendment No. 52: Appropriates $75,000,000 as proposed by the Senate instead of $76,513,000 as proposed by the House.

The conference agreement of $75,000,000, when added tio the $25,000,000 included in Title IV of H.R. 3015, provides a total appropriation of $100,000,000, the full budget request for fiscal year 1990 for expenses from the Assets Forfeiture Fund.

INTERAGENCY LAW ENFORCEMENT

ORGANIZED CRIME DRUG ENFORCEMENT

Amendment No. 53: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

INTERAGENCY LAW ENFORCEMENT

ORGANIZED CRIME DRUG ENFORCEMENT

For necessary expenses for the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking not otherwise provided for, $168,560,000: Provided, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed in this Act: Provided further, That appropriations under this heading may be used to reimburse agencies for any costs incurred by Organized Crime Drug Enforcement Task Forces between October 1, 1989 and the date of this Act.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $168,560,000 as proposed by the Senate. The conference agreement also includes language, proposed by the Senate, which provides that funds obligated from this appropriation may be used under authorities available to the organizations receiving those funds, and also inserts language proposed by the Senate which provides for reimbursement of funds for costs incurred between October 1, 1989 and enactment of this bill. The House bill contained no similar provisions. The conference agreement deletes language proposed by the Senate which would have limited reimbursement under this appropriation to Justice Department agencies.

The conference agreement of $168,560,000, when added to the $46,361,000 included in Title IV of H.R. 3015, provides a total appropriation of $214,921,000 for Organized Crime Drug Enforcement for fiscal year 1990—the full budget request.

The total amount available of $214,921,000 provides the requested baseline of $206,886,000 and program growth of 94 positions and $8,045,000 to allow the INS to participate in OCDE investigation.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

Amendment No. 54: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For expenses necessary for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 2,730 passenger motor vehicles of which 1,850 will be for replacement only, without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; and not to exceed $70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; $1,423,340,000, of which not to exceed $25,000,000 for automated data processing and telecommunications and $1,000,000 for undercover operations shall remain available until September 30, 1991; of which not to exceed $8,000,000 for research and development related to investigative activities and $15,000,000 for construction of Pod B of the Engineering Research Facility at Quantico, Virginia, shall remain available until expended; and of which not to exceed $500,000 is authorized to be made available for making payments or advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to terrorism and drug investigations: Provided, That the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for noncriminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification services and associated costs: Provided further, That not to exceed $30,000 shall be available for official reception and representation expenses: Provided further, That not to exceed $7,500,000 for a language translation system shall remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $1,423,340,000 as proposed by the Senate for the FBI for fiscal year 1990 and includes language proposed by the Senate which makes up to $25,000,000 for automated data processing and telecommunications and $1,000,000 for undercover operations, available until September 30, 1991, and makes up to $8,000,000 for research and development available until expended; and inserts new language not in the House or Senate bill which makes $15,000,000 for construction of Pod B of the Engineering Research Facility at Quantico, Virginia, available until expended; and includes language proposed by the Senate which earmarks up to $500,000 for payments to State and local law enforcement agencies, $70,000 to meet unforeseen emergencies of a confidential character, $30,000 for official reception and representation expenses, and $7,500,000 for a language translation systems. The conference agreement also includes language limiting to 2,730, instead of 2,600 as proposed by the Senate, the number of passenger vehicles to be purchased; and inserts language proposed by the Senate to allow the FBI to establish and collect fees to process fingerprint identifications and name checks. The House bill contained no provision on any of these matters.

The conference agreement of $1,423,340,000, when added to the $97,045,000 included in Title IV of H.R. 3015, and to the estimated collections of $30,000,000 from fees for processing fingerprint identifications and namechecks, provides total fund availability of $1,550,385,000 for the FBI for fiscal year 1990. The conference agreement fully funds the President's amended budget request to include additional resources for the President's violent crime initiative and the financial institution fraud investigations.

The conference agreement includes language providing $15,000,000 for the continued construction of the Engineering Research Facility at the FBI Academy in Quantico, VA. Completion of this facility is critical for research and development of sophisticated surveillance and other technical equipment to support the FBI intelligence related activities and to enhance FBI and DEA drug investigations. The conferees agree that the Department should emphasize completion of this facility in future budget requests.

The conferees support the leadership role the FBI has undertaken in developing DNA profiling as a weapon in the fight against violent crime and expect $819,000 of this increase to be used to (1) establish a national DNA database system to be available to State and local law enforcement authorities; and (2) for the training of State and local examiners in DNA analysis.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 55: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $492,180,000. The House bill contained no similar provision.

The conference agreement includes language proposed by the Senate which makes up to $1,700,000 for purchase of evidence and information, $9,638,000 for ADP and telecommunications, and $2,000,000 for technical and laboratory equipment available until September 30, 1991; makes up to $1,200,000 for research available until expended; and provides $70,000 to meet unforeseen emergencies, and $30,000 for official reception and representation expenses. The conference agreement also includes language proposed by the Senate which limits to 703 the number of passenger vehicles to be purchased, allows for acquisition, lease and maintenance of aircraft, and allows expenses for conducting drug education programs. The House bill contained no similar provisions.

The conference agreement of $492,180,000, when added to the $64,301,000 included in Title IV of H.R. 3015, provides a total appropriation of $556,481,000 for DEA for FY 1990.

The total amount appropriated provides for a revised baseline of $499,521,000 and program increases as follows: $23,683,000 for domestic enforcement; $4,162,000 for State and local task forces; $8,390,000 for intelligence resources; $3,203,000 for DEA laboratory services; $2,500,000 for DEA training; $8,772,000 for DEA Office Automation Systems; $1,000,000 to upgrade the computer system at EPIC; and $5,300,000 to implement the President's Drug Strategy, of which $2,000,000 is for demonstration grants to State and local governments to clean up and safely dispose of substances associated with illegal drug laboratories pursuant to section 2405 of the Anti-drug Abuse Act of 1988.

The conferees believe that regional drug enforcement task forces are vital to the efforts of law enforcement agencies fighting the war on drugs in those regions. The conferees expect the DEA to provide as many additional agents as possible within available resources to these task forces.

The conferees are concerned with the DEA's plans to reduce the level of special agent staffing in the Charleston, SC, resident office. The conferees expect the DEA to maintain positions at not less than the seven special agents on board in this office prior to April 1, 1989.

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

Amendment No. 56: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the number "525" named in said amendment insert: *620*, and

In lieu of the sum "$823,486,000" named in said amendment insert *$828,300,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $828,300,000 for the Immigration and Naturalization Service for fiscal year 1990 instead of $823,486,000 as proposed by the Senate and includes earmarks proposed by the Senate of $50,000 to meet unforeseen emergencies, $400,000 for research to remain available until expended and $5,000 for official reception and representation expenses. The conference agreement also limits to 620, instead of 525 proposed by the Senate, the number of passenger vehicles to be purchased, and, as proposed by the Senate, provides for acquisition, lease and operation of aircraft, provides for research related to immigration enforcement, limits the payment of overtime to $25,000, and allows for the purchase of uniforms. The agreement also includes permanent provisions, proposed by the Senate, which remove the requirement to transfer deposits in the amount of $50,000,000 annually from the Immigration Examination Fee account to the general fund of the Treasury; and allow capital assets acquired by the Immigration and Legalization account to be made available for general use by the INS. The House bill contained no similar provisions.

The conference agreement of $828,300,000, when added to the $16,891,000 included in Title IV of H.R. 3015, provides a total appropriation of $845,191,000 for the INS in FY 1990.

The total amount appropriated provides for the requested baseline, less amounts estimated for adjudications and naturalization

programs which are funded through the Examinations Fee Account, and provides for program growth as follows: $9,000,000 and 130 positions to staff two new detention facilities for criminal aliens; $1,000,000 for advanced training for INS personnel; $5,700,000 for the President's violent crime initiative; $9,000,000 for 200 additional border patrol agents above FY 1989 levels of 4,500; $5,000,000 to expand the Machine Readable Visa (MRV) program; and $2,000,000 to expand the Automated Fingerprint Identification System (AFIS) to six sites. The conference agreement does not accept the proposed reduction of $31,200,000 and 1,655 positions included in the request.

The conference agreement provides $2,000,000 to expand the Automated Fingerprint Identification System (AFIS), as demonstrated in a prototype test at one site in the San Diego Border Patrol Sector, to six sites in the San Diego Sector. The INS shall report back to the Committee on Appropriations of the House and Senate by April 15, 1990, on the effectiveness of the expanded prototype as well as its potential for expansion on a southern border-wide basis at Border Patrol sites and port of entry locations.

The conference agreement includes bill language which allows the INS to retain the first $50,000,000 collected in naturalization fees into the Examinations Fee Account. The Department estimates that $90,000,000 will be collected into this fund which is more than enough to handle the base for the Adjudications and Naturalization program of $58,582,000 plus any projected growth in the program. The conferees believe that only those costs directly associated with the adjudications and naturalization program should be reimbursed from the Fund.

The conferees have also been made aware of the fact that the naturalization process could be greatly accelerated by improving the electronic transfer of information between the INS and the Federal courts. The conferees would encourage the INS and the Courts to expedite these improvements. The conferees would be especially supportive of the use of the Fund to finance improved compatibility between INS and Court automation systems.

IMMIGRATION EMERGENCY FUND

Amendment No. 57: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

IMMIGRATION EMERGENCY FUND

For necessary expenses of the immigration emergency fund as authorized by section 404(b) of the Immigration and Nationality Act, $35,000,000 to remain available until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides funds for possible increases in border patrol and other enforcement activities, and for reimbursement to States and localities for assistance in meeting an immigration emergency, subject to Presidential determination as proposed by the Senate and inserts new language making the funds available until expended. The House bill included no similar provisions.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

Amendment No. 58: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading. The House bill contained no similar provision.

Amendment No. 59: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which provides $1,097,631,000 as proposed by the Senate. The House bill contained no similar provision.

The conference agreement also includes language proposed by the Senate which limits to 159 the number of passenger vehicles to be purchased, allows for the transfer to the Health Resources and Services Administration funds for medical relief of inmates, provides for the purchase of uniforms and allows $3,000 for official reception and representation expenses. The House bill contained no similar provisions.

The conference agreement of $1,097,631,000, when added to the $54,923,000 included in Title IV of H.R. 3015, provides a total appropriation of $1,152,554,000 for the Salaries and Expenses of the Federal Prison System for FY 1990—the full budget request.

The total appropriation of $1,152,554,000 provides for requested adjustments to base and built-in changes and for program increases as follows: $45,379,000 for activation of new facilities; $25,500,000 for improved staffing; $3,200,000 for ADP; $24,535,000 for population adjustments; $10,642,000 for contract confinement; $10,983,000 for equipment and inventory; $6,000,000 for vocational training; and $6,000,000 for inmate performance pay.

The conference agreement also includes $320,000 for Prison MATCH programs. These funds would provide $50,000 for each of the four existing programs (Alderson, West Virginia; Fort Worth, Texas; Pleasanton, California; Lexington, Kentucky) and $30,000 for each of the four other federal institutions (Geiger Correctional Institution, Washington; Marianna, Florida; Danbury, Connecticut; and Phoenix, Arizona) where female prisoners are now housed. Such funds should support inmate parent/child programs, which are contracted to local, non-profit agencies and which include a parent-child visiting center, parent training classes, and social services for the children of inmate parents.

NATIONAL INSTITUTE OF CORRECTIONS

Amendment No. 60: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $10,112,000. The House bill contained no similar provision.

The conferees have been made aware of the proposed move of the National Academy of Corrections and the decision of the Justice Department Site Selection Committee. The conferees believe that the Department should move forward with their plans to consolidate and relocate the Academy.

BUILDINGS AND FACILITIES

Amendment No. 61: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; purchase, leasing and acquisition of facilities and remodeling and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, $401,332,000, to remain available until expended: Provided, That labor of United States Prisoners may be used for work performed under this appropriation: Provided further, That not to exceed 10 per centum of the funds appropriated to "Buildings and Facilities": in this Act or any other Act may be transferred to "Salaries and expenses", Federal Prison System upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 606 of this Act.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $401,332,000 for Buildings and Facilities for fiscal year 1990 as proposed by the Senate. The conference agreement also includes language proposed by the Senate which allows for the use of U.S. prisoners for work performed at prisons, and provides for the transfer of up to 10 percent of the Buildings and Facilities appropriation to the Salaries and Expenses appropriation in the event of an emergency. The House bill contained no similar provisions.

The conference agreement of $401,332,000 when added to the $1,000,000,000 included in Title IV of H.R. 3015 and the $115,000,000 to be transferred from the Special Forfeiture Fund, provides for total fund availability of $1,516,332,000 for the construction and expansion of Federal prisons—the full request for fiscal year 1990. These funds provide for a prison construction program as follows:

	Increased bed space	Funding
New Federal prisons:		
Correctional complexes (7)	13,720	$897,100,000
Federal correctional institutions (3)	3,105	165,000,000
Expansion of existing units	1,015	41,800,000
Detention capacity:		
Metropolitan detention center (1)	700	58,000,000
Detention centers (3)	2,100	214,000,000
Detention units (2)	300	19,900,000
Detention center expansions (2)	500	50,000,000
Holdover unit	150	10,000,000
Military acquisitions	1,250	19,800,000
Modernization and repair		40,732,000
Total	22,840	1,516,332,000

The conference agreement also provides language proposed by the Senate which will allow for the lease of a medium security prison to be staffed and operated by the Bureau of Prisons. The conferees have agreed to allow for the lease of one Federal prison on a test basis to determine the cost effectiveness of such an approach. The conferees expect the Bureau to keep the Committees on Appropriations apprised on a regular basis of the status of this project. The House bill contained no similar provision.

The conference agreement deletes language proposed by the Senate which would have earmarked $14,000,000 for expansion

of Oakdale II to 1,000 beds for the custody of criminal aliens. The House bill contained no similar provision.

The conferees understand that the Bureau of Prisons has determined that one of the facilities to be constructed within amounts appropriated in FY 1990 is the expansion to 1,000 beds at the criminal alien detention center in Oakdale, Louisiana. The conferees believe this to be a wise decision on the part of the Bureau and wholeheartedly support the decision.

FEDERAL PRISON INDUSTRIES, INCORPORATED

Amendment No. 62: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which authorizes Federal Prison Industries to make expenditures necessary to carry out its programs. The House bill contained no similar provision.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Amendment No. 63: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $2,857,000, the amount requested in the budget. The House bill contained no similar provision.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

Amendment No. 64: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum "$80,783,000" named in said amendment insert: *$90,783,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $90,783,000 instead of $81,150,000 as proposed by the House and $80,783,000 as proposed by the Senate.

Amendment Nos. 65 & 66: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendments of the Senate which insert authorization citations. The House bill contained no similar provisions.

Amendment No. 67: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$64,193,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $64,193,000 instead of $69,693,000 as proposed by the House and $69,193,000 as proposed by the Senate.

Amendment Nos. 68 & 69: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendments of the Senate which add authorization citations. The House bill contained no similar provisions.

Amendment No. 70: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which deletes House language on Mariel Cubans as proposed by the Senate and inserts Senate language on this matter. The Senate language incorporated by the conference agreement provides $5,000,000 for reimbursement to States for costs of incarcerating illegal aliens and certain Cuban nationals, requires that grants be made by April 1, 1990 and limits the amount of reimbursement per prisoner per annum to $12,000.

The following table shows the recommended amounts for fiscal year 1990 for the Office of Justice Programs, to include amounts provided in both H.R. 2991 and Title IV of H.R. 3015:

[In thousands of dollars]

Program/Activity	Fiscal year—		H.R. 2991			Conference, H.R. 3015	Total funding, fiscal year 1990
	1989 enacted	1990 budget	House	Senate	Conference		
National Institute of Justice	$21,000	$24,691	$23,800	$22,933	$22,933	0	$22,933
Bureau of Justice Statistics	19,986	22,449	21,032	21,032	21,032	0	21,032
State and local assistance	3,497	0	0	.....	0	0	0
Emergency assistance	0	0	0	5,000	10,000	0	10,000
(Prior year carryover)	(1,148	(1,148)	(1,148)	(0)	(0)	(0)	(0)
Missing children	4,000	4,200	4,000	4,000	4,000	0	4,000
Regional information sharing system	13,000	0	13,000	13,500	13,500	0	13,500
Management and administration	17,900	18,405	19,318	19,318	19,318	0	19,318
General reduction	0	0	0	−5,000	0	0	0
(Prior year carryover)	(1,200)	(0)	(0)	(0)	(0)	(0)	(0)
Subtotal, new budget authority	79,383	69,745	81,150	80,783	90,783	0	90,783
Juvenile justice programs	64,692	1,508	69,693	69,193	64,193	8,821	73,014
(Prior year carryover)	(2,000)	(0)	(0)	(0)	(0)	(0)	(0)
Mariel Cubans	5,000	0	5,000	5,000	5,000	(0)	5,000
State and local grants	150,000	350,000	150,000	150,000	150,000	300,000	450,000
Total, discretionary; budget authority	299,075	421,253	305,843	304,976	309,976	308,821	618,797
Public safety officers: Benefits program (mandatory)	24,000	25,000	25,000	25,000	25,000	0	25,000
Total	323,075	446,253	330,843	329,976	334,976	308,821	643,797
(Prior year carryover)	(4,348)	(1,148)	(1,148)	(0)	(0)	(0)	(0)

Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.—The conference agreement of $150,000,000, when added to the $300,000,000 included in Title IV of H.R. 3015, provides a total of $450,000,000 for fiscal year 1990 for the State and local drug control and system improvement grant programs.

The conference agreement provides for a total of $50,000,000 for discretionary grants, to include:

Not less than $3,000,000 for innovative neighborhood-oriented policing projects in both urban and rural areas, such as: the National Neighborhood Crime and Drug Abuse Prevention Program of the Eisenhower Foundation; Operation Siege in Houston, Texas; PNOPP in Portland, Oregon; Knock and Talk in Anchorage, Alaska; and the National Association of Town Watch.

Not less than $2,700,000 for the National Crime Prevention Council to administer the National Crime Prevention Campaign.

Not less than $2,000,000 for drug abuse demand reduction programs, specifically not less than $1,000,000 for the Drug Abuse Resistance Education (DARE) program and not less than $1,000,000 for the National Crime Prevention Campaign.

Not less than $1,200,000 for the Structured Sentencing Progam and the Prison Capacity Program in order in provide mechanisms for States to make maximum effective use of their correctional resources.

Not less than $3,000,000 for the Organized Crime Narcotics (OCN) program to support regional organized crime task forces in order to foster Federal, State and local cooperation.

The conferees also support continuation of discretionary grants for comprehensive, coordinated training for state and local law enforcement personnel and for treatment services for incarcerated offenders, including community-based aftercare.

The conference agreement also provides for an increase of $500,000 and 10 full-time positions above FY 1989 levels for Management and Administration by the Bureau of Justice Assistance (BJA) of this grant program. The conferees expect these additional resources to be used to increase both the monitoring and reporting of the formula block grant program. The conferees believe increased monitoring is needed to ensure that funds are being properly spent by grant recipients. The additional monitoring efforts should include the development and implementation of a monitoring plan and checklists. The conferees also believe that current reporting to the results of demonstration projects among local law enforcement agencies should be expanded in order to share the valuable lessons learned. The expanded reporting should include increased travel to review projects and the subjective assessment of programs.

The conferees are aware that up to 10 percent of a State's formula block grant may be spent for management and administration. Considering the large increase in formula

grants for FY 1990, the conferees believe that these costs should be limited to 5 percent and request the BJA to issue guidelines to State agencies to recommend the lower amounts. Also, the conferees expect the BJA to increase monitoring of these management costs to ensure that there is no waste or abuse of this grant authority.

Emergency Assistance.—The Federal government's ability to respond in a timely and effective manner to assist state and local law enforcement agencies facing unprecedented public safety emergencies, such as those faced by the States of South Carolina in the aftermath of Hurricane Hugo and the State of California due to the earthquake of October 17, 1989, must be sufficient to meet the needs of impacted jurisdictions. Therefore, the conferees have included $10,000,000 for grants, cooperative agreements and other assistance authorized by the Emergency Federal Law Enforcement Assistance Program. The conferees intend that of the funds provided $5,000,000 will be allocated to those localities most devastated by Hurricane Hugo and $5,000,000 will be provided to assist localities in California suffering from the impact of the earthquake of October 17, 1989.

Juvenile Justice and Delinquency Prevention Program (JJDPP).—The conference agreement of $64,193,000, when added to the $8,821,000 included in Title IV of H.R. 3015, provides a total of $73,014,000 in fiscal year 1990 for JJDPP, an increase of $6,322,000 over amounts available in fiscal year 1989.

The conference agreement includes: $350,000 to carry out the provisions of section 241(f) of the JJDP Act to provide financial and technical assistance to an organization representing the State Advisory Groups (SAGs); $2,900,000 for the coordinated, Law-Related Education (LRE) program; $3,000,000 to initiate a new program relating to juvenile gangs, drug abuse, and drug trafficking of which $300,000 is for the Teen, Crime and the Community Program; $2,000,000 for the National Council of Juvenile and Family Court Judges; $650,000 for the Court-Appointed Special Advocate (CASA) program; and $250,000 for the training of juvenile corrections personnel in three specific areas—line supervisor training, middle management training, and continued specialty training.

National Institute of Justice.—The conference agreement provides $22,933,000 in fiscal year 1990 for the National Institute of Justice (NIJ).

The conference agreement provides $200,000 for private sector efforts to combat and respond to prejudice and bigotry-related crimes. The conferees believe that organizations primarily devoted to work in the area of prejudice and bigotry-related crime, such as the National Institute Against Prejudice and Violence, would be ideally suited for these efforts.

The conference agreement also provides $400,000 for a grant to the National Criminal Justice Association to study the fiscal and other impacts on States of implementing drug testing programs for targeted classes of arrestees, individuals in jails and prisons, and persons on conditions or supervised release.

Management and Administration.—The conference agreement provides a total of $24,418,000 for management and administration, to be derived as follows:

New budget authority.....	$19,318,000
Juvenile Justice, M&A	3,100,000
State and local grants, M&A.....	2,000,000
Total	24,418,000

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

Amendment No. 71: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading. The House bill contained no similar provision.

Amendment No. 72: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 201, contained in previous appropriations Acts with regard to official reception and representation expenses, but has reduced the amount to $30,000. The House bill contained no similar provision. The conferees agree that these expenses shall not be limited to those incurred abroad.

Amendment No. 73: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 202, contained in previous appropriations Acts which allows use of material produced by Federal convict labor to be used in highway construction. The amendment also makes this a permanent provision. The House bill contained no similar provision.

Amendment No. 74: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 203, contained in previous appropriations Acts which makes appropriations for uniforms and allowances. The amendment also makes this a permanent provision. The House bill contained no similar provision.

Amendment No. 75: Reported in technical disagreement. The managers on that part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 204, contained in previous appropriations Acts, which continues in FY 1990 the authorities contained in the FY 1980 Department of Justice Authorization Act. The Senate bill also includes language contained in FY 1989 which provides for undercover investigative operations in FY 1990 of the FBI and DEA. The House bill contained no similar provision.

Amendment No. 76: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 205, contained in previous appropriations Acts, which precludes use of appropriated funds to pay for an abortion. The House bill contained no similar provision.

Amendment No. 77: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 206, contained in previous appropriations Acts, which precludes the use of appropriated funds to require anyone to perform or facilitate in any way the performance of any abortion. The House bill contained no similar provision.

Amendment No. 78: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 207, contained in previous appropriations Acts, which requires the Bureau of Prisons to provide escort services for female prisoners seeking abortions. The House bill contained no similar provision.

Amendment No. 79: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 208. Section 6077(c) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat. 4325) is amended by striking "September 30, 1989" and inserting "September 30, 1991".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts language to amend section 6077 of P.L. 100-690 to delay until September 30, 1991 the implementation of an amendment to the assets forfeiture law. This delay will give the States and the legislative committees of the Congress time to address this issue without adversely impacting State and local law enforcement. The Senate amendment inserted language which would have repealed section 6077. The House bill contained no similar provision.

Amendment No. 80: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 209. (a) The Civil Liberties Act of 1988 (Public Law 100-383; 50 U.S.C. App. 1989b and following) is amended by adding at the end thereof the following new section:

"SEC. 110. ENTITLEMENTS TO ELIGIBLE INDIVIDUALS.

"Subject to Sections 104(e) and 105(g) of this title, beginning on October 1, 1990, the payments to be made to any eligible individual under the provisions of this title shall be an entitlement. As used in this section, the term 'entitlement' means 'spending authority' as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974.".

(b) Section 105 of the Civil Liberties Act of 1988 is amended by adding at the end thereof the following:

"(g) LIABILITY OF UNITED STATES LIMITED TO AMOUNT OF THE FUND.—

"(1) GENERAL RULE.—An eligible individual may be paid under this section only from amounts in the Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in this title shall authorize the payment to an eligible individual by the United States Government of any amount authorized by this section from any source other than the Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS TO BE PAID.—If at any time the fund has insufficient funds to pay all eligible individuals at such time, such eligible individuals shall, to the extent permitted under paragraph (1), be paid in full in the order specified in subsection (b).".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate, with new technical amendments, which establishes an entitlement for redress payments to Japanese-American internees. The House bill contained no similar provisions. The language provides that eligible individuals are entitled to their $20,000 payment subject to

the availability of funds in the Civil Liberties Public Education Fund. Appropriations to the Fund are capped at $500,000,000 for fiscal year 1991.

Amendment No. 81: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which allows the Department to spend up to $100,000 for rewards for information regarding terrorism. The House bill contained no similar provision.

Amendment No. 82: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the date "1991" named in said amendment, insert: *"1990"*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree that many local community law enforcement agencies would be unable to participate in this program if they were required to provide $1 for every $1 of Federal money. The conferees believe that leaving the matching requirement at $1 for each $3 of Federal money will allow more agencies to participate.

Amendment No. 83: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which amends the Anti-Drug Abuse Act of 1988 to eliminate the fixed amount of $500,000 of drug grants apportioned to States under current law and replace it with a percentage (.4 percent). The House bill contained no similar provision.

Amendment No. 84: Deletes bill language proposed by the Senate to ensure that the President and the Drug Czar give appropriate emphasis and resources to rural areas and small towns.

The conferees ageee that the President and the Drug Czar should direct appropriate emphasis and resources to rural areas and small towns.

Amendment No. 85: Deletes language proposed by the Senate establishing a Religious Issues Oversight Board within the Justice Department to handle Federal inmate grievances. The conferees agree that at this time the need for such a Board has not been demonstrated.

TITLE III—DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 86: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by said amendment insert the following:

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Department of State and the Foreign Service, not otherwise provided for, including obligations of the United States abroad pursuant to treaties, international agreements, and binational contracts (including obligations assumed in Germany on or after June 5, 1945) and expenses authorized by section 9 of the Act of August 31, 1964, as amended (31 U.S.C. 3721), and section 2 of the State Department Basic Authorties Act of 1956, as amended (22 U.S.C. 2669); telecommunications; expenses necessary to provide maximum physical security in Government-owned and leased properties and vehicles abroad; representation to certain international organizations in which the United States participates pursuant to treaties, ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress; acquisition by exchange or purchase of passenger motor vehicles as authorized by 31 U.S.C. 1343, 40 U.S.C. 481(c) and 22 U.S.C. 2674, except that passenger motor vehicles with additional systems and equipment may be purchased without regard to any price limitation otherwise established by law as authorized by 31 U.S.C. 1343(c), $1,741,239,000, and in addition not to exceed $250,000 in registration fees collected pursuant to section 38 of the Arms Export Control Act, as amended, may be used in accordance with section 38(b)(3)(A) of such Act (section 1255(c) of Public Law 100-204). In addition, not to exceed $51,152,000, to remain available until expended, may be transferred to this appropriation from "Acquisition and Maintenance of Buildings Abroad": Provided, That the level of service provided through the Foreign Affairs Administrative Support System (FAAS) shall be commensurate with the amounts appropriated, or otherwise made available therefor in Appropriations Acts.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $1,741,239,000, transfers $51,152,000, for the Administration of Foreign Affairs Salaries and Expenses account, provides $250,000 in registration fees to be used by the Office of Munitions Control and provides certain language governing the use of funds carried in prior years proposed by the Senate. The Senate bill provided $1,743,967,000, a transfer of $29,152,000 for Administration of Foreign Affairs and $500,000 for the Munitions Control Office and the aforementioned language provisions. The House bill contained no similar provision.

The conference agreement also includes language proposed by the Senate which requires that the level of service provided to other departments and agencies at overseas posts through the Department's Foreign Affairs Administrative Support System (FAAS) shall be commensurate with amounts appropriated or otherwise made available to those departments and agencies in Appropriations Acts. The House bill included no similar provision.

The conference agreement includes language which will permit up to $51,152,000 to be transferred from the "Acquisition and Maintenance of Buildings Abroad" account to the Salaries and Expenses account. The conferees intend that of this amount, $22,000,000 is for the Construction Security Program, which together with the $23,000,000 in new budget authority in this amount will provide a total of $45,000,000 for this program.

The conference agreement also reflects $12,000,000 in anticipated gains in foreign currency purchases above the rates used in the budget estimates.

The conference agreement includes $16,465,000 to continue the modernization of the telecommunications network (DOSTIN); $5,000,000 for the purchase of computing equipment for the Beltsville Information Management Center; $2,000,000 for counterterrorism research and development; $14,000,000 for the second year construction costs of the Foreign Affairs Training Center; and $4,000,000 for continuation of the machine readable visa project.

The conference agreement reflects a transfer of $2,328,000 from the Salaries and Expenses Account to the Office of the Inspector General.

The conferees commend the Consolidated Overseas Schools Assistance program for its continued accomplishments in improving the quality of education for U.S. students living abroad. With funding from the Salaries and Expenses appropriations of the Department of State, the United States Information Agency and the Agency for International Development, this program continues to accomplish the dual objectives of providing educational opportunities for U.S. dependents and of demonstrating the American educational philosophy and practice to local children and educators. The conferees also commend the contribution of the members of the Overseas Schools Advisory Council and its Educational Assistance Program for generating private sector financial support and participation in the activities of American-sponsored overseas schools.

The conferees are pleased with the expanded FAAS system. The conferees expect the Department of State to submit a report by February 1, 1990 to the House and Senate Appropriations Committees on the feasibility of including capital and security costs into the FAAS system. The conferees also expect the Department to examine the feasibility of a per capita cost-sharing program based on the number of other agency personnel stationed at State Department facilities overseas and to include its findings on this matter in the report.

The conferees note the achievements of the Diplomatic Security, Physical Security Division Quality Assurance Program. The conferees recommend that the Quality Assurance Program be sustained and, if possible, expanded to encompass other physical security equipment necessary to the protection of the Department's personnel and property at Diplomatic Missions.

It is the conferees' understanding that the appropriate House and Senate committees may shortly agree on authorizing legislation which would provide for a small, unclassified consulate in Kiev. The conferees and the State Department believe that such a facility would provide a much-needed American presence in the Ukraine, the largest of the Soviet Union's non-Russian republics. Should the appropriate authorizing legislation be signed into law, the conferees will consider a reprogramming request for the resources necessary to open such a facility.

A number of conferees recently visited the embassy in Moscow and are concerned about the lack of security measures and the attitude of our personnel at the Embassy in Moscow. The conferees direct that the Department of State prepare a report, in classified and unclassified form, addressing security procedures at our Embassy in Moscow and submit the report to the House and Senate Committees on Appropriations by January 1, 1990.

The conferees expect the Secretary of State to establish procedures to monitor the recurrent use of language instructors with temporary appointments at the Department's Foreign Service Institute and preclude reliance on granting an unreasonable number of successive temporary appointments to qualified personnel. The conferees expect a report on this matter to be submitted to the House and Senate Appropriations Committees by April 1, 1990.

The conferees instruct the Department to examine the number of FTPs allocated to the Foreign Service Institute to insure it is

commensurate with FSI's requirements. In this regard, FSI should consider arranging training for the occasional student assigned to learn an esoteric language, e.g., Icelandic, via a private language school or training facility, as a possibly more cost effective alternative, rather than attempting to accommodate such a student at FSI.

Finally, the conferees direct FSI to provide a report to the House and Senate Appropriations Committees by February 1, 1990 on the measures it intends to implement, with associated costs, during the next two years, to alleviate the habitability issues endemic to its facilities, notably SA-3.

The conferees note the large backlog of Soviet and Eastern European refugees in Western European awaiting processing and, in some cases, resettlement by the U.S. Government. The conferees note that in processing applications from Polish refugees, the State Department and Immigration and Naturalization Service should be aware that even though there is a new regime in Poland, not all refugees may be able to return safely to localities and establishments still controlled by the same communist apparatus as before. Further, the conferees expect these agencies to take appropriate measures, including increasing personnel, to speed up the processing of all refugees in Europe, with special attention to those refugees who have waited the longest.

OFFICE OF THE INSPECTOR GENERAL

Amendment No. 87: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$21,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $21,000,000, for the Office of Inspector General instead of $18,672,000 as proposed by the Senate. The House bill contained no similar provision. The conference agreement also includes $2,328,000 for the Office of Security Oversight.

REPRESENTATION ALLOWANCES

Amendment No. 88: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $4,600,000 for Representation Allowances. The House bill contained no similar provision.

PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

Amendment No. 89: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $9,100,000 for Protection of Foreign Missions and Officials. The House bill contained no similar provision.

ACQUISITION AND MAINTENANCE OF BUILDINGS ABROAD

Amendment No. 90: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts an authorization citation. The House bill contained no similar provision.

The conferees understand the facility currently housing components of the U.S. consulate general in Istanbul, Turkey, is an historic structure known as the Palazzo Corpi. The Department is currently involved in planning the construction of a new facility that will house the consulate. The conferees also understand that although the Department of State is expected to contribute to the facilities construction program through the sale of surplus properties, the conferees urge the Department to investigate fully all available options that may permit the United States Government to retain ownership of the Palazzo Corpi. The conferees direct that by February 1, 1990 the Department submit a report to the House and Senate Appropriations Committees which outlines objective estimates of the proceeds expected from the division and sale of the Palazzo Corpi and adjacent property and facilities housing U.S. consulate operations. The report also is to include an analysis of the potential for housing functional units of the Istanbul consulate and other U.S. Government agencies, in the Palazzo Corpi. The conferees believe the Department should evaluate the potential for modifications to the perimeter of the Palazzo Corpi such as the addition of barriers, changes in traffic patterns, etc., by the host government and include its findings on this matter in the report.

Amendment No. 91: Appropriates $348,100,000 as proposed by the Senate instead of $129,200,000 as proposed by the House.

The conference agreement of $348,100,000 for Acquisition and Maintenance of Buildings Abroad will fund the following capital projects: $88,484,000 for construction of a new Embassy in Bangkok, Thailand; $11,400,000 for construction of a new Embassy in Papua, New Guinea; $20,000,000 for security construction projects in other agencies; and $9,300,000 for security supervision expenses at ongoing construction projects.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

Amendment No. 92: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $4,700,000 for Emergencies in the Diplomatic and Consular Service. The House bill contained no similar provision.

PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

Amendment No. 93: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $11,300,000 for Payment to the American Institute in Taiwan. The House bill contained no similar provision.

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

Amendment No. 94: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading.

Amendment No. 95: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$622,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $622,000,000 for Contributions to International Organizations instead of $668,011,000 as proposed by the Senate. The House bill contained no similiar provision.

The conference agreement reflects $20,000,000 in anticipated exchange rate savings and a general reduction of $27,000,000 from the amounts requested for the U.S. Government's full assessed contribution to 44 international organizations for FY 1990.

The conferees support the provision in the FY 90-91 Foreign Relations Authorization Act as passed the House and Senate directing the Assistant Secretary for Inter-American Affairs to assume direct and complete responsibility for the management of all aspects of U.S. relations with, including the management of U.S. contributions to, the Organization of American States.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

Amendment No. 96: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$81,500,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $81,500,000 for Contributions to International Peacekeeping Activities instead of $111,184,000 as proposed by the Senate. The House bill contained no similar provision.

The conferees regret that the overall allocation for this bill required necessary reductions in a number of significant areas including those dealing with the State Department's contributions to international organizations and peacekeeping. This difficult choice should not be seen as a lessening of the importance which the Congress attaches to seeking to provide for full funding of our current assessments to international organizations or a systematic phased effort to pay US arrearages. Nor is it in any way a denigration of the importance of international peacekeeping.

The conferees share in the sentiments expressed in a recent letter from Secretary of State Baker about these important goals and understand that the President has assigned high priority to United States efforts to work with the UN on continuing budget reform efforts and on other concerns, including peacekeeping, which affect our national interests. In the period ahead the conferees will work with the Administration to encourage the continuation of positive trends in international organizations.

INTERNATIONAL CONFERENCES AND CONTINGENCIES

Amendment No. 97: Reported in technical disagreement. The manager on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $6,340,000 for International Conferences and Contingencies. The House bill contained no similar provision.

INTERNATIONAL COMMISSIONS

Amendment No. 98: Deletes Senate language which would have inserted a heading.

Amendment No. 99: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading and language providing for necessary expenses to meet obligations of the United States arising under treaties, conventions or specific Acts of Congress. The House bill contained no similar provision.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Amendment No. 100: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading and language providing for necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico. The House bill contained no similar provision.

SALARIES AND EXPENSES

Amendment No. 101: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $10,460,000 for the International Boundary and Water Commission, Salaries and Expenses account. The House bill contained no similar provision.

The conferees agree that the construction of a low-head hydroelectric power dam along the U.S.-Mexico border, which will double as a border crossing, will help relieve traffic congestion, provide a facility which will offer revenues that can be applied to the Rio Grande pollution problems, and bring much needed recreational facilities to an economically underdeveloped area. Within the funds provided for the International Boundary and Water Commission, the conferees agree that the Commission should provide sufficient funds for a study to determine the engineering, economic and financial feasibility of the project.

CONSTRUCTION

Amendment No. 102: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $11,500,000 for construction projects of the International Boundary and Water Commission. The House bill contained no similar provision.

The conferees are aware of the ongoing joint venture with the Mexican government to rehabilitate the Mexicali treatment system's pumping plants and other systems improvements on the New River in Imperial Valley, California. The conferees understand that the Commission is nearing completion of an agreement to initiate a new joint project to prevent the discharge of toxic waste by Mexican and U.S. owned businesses in Mexicali. The conferees agree that the Commission should consider the allocation of funds to continue the cleanup of the New River and submit a reprogramming request for this purpose to the House and Senate Appropriations Committees.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

Amendment No. 103: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $4,500,000 for the U.S. share of expenses for International Commissions. The House bill contained no similar provision.

The conference agreement includes $750,000 for the International Boundary Commission and $3,750,000 for the International Joint Commission.

INTERNATIONAL FISHERIES COMMISSIONS

Amendment No. 104: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $12,300,000 for the International Fisheries Commissions. The House bill contained no similar provision.

The conference agreement includes $1,300,000 above the budget request for the purchase of lampricide by the Great Lakes Fishery Commission.

OTHER

U.S. BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS

Amendment No. 105: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $4,000,000 for U.S. Bilateral Science and Technology Agreements. The House bill contained no similar provision.

The conference agreement includes $2,500,000 for the U.S. bilateral science and technology agreement with Yugoslavia and $1,5000,000 to reestablish a science and technology program with Poland. The House bill contained no similar provision.

PAYMENT TO THE ASIA FOUNDATION

Amendment No. 106: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert the following: *$13,900,000.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $13,900,000 for Payment to the Asia Foundation instead of $14,100,000 as proposed by the Senate. The House bill contained no similar provision.

SOVIET-EAST EUROPEAN RESEARCH AND TRAINING

Amendment No. 107: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $4,600,000 for Soviet-East European Research and Training. The House bill contained no similar provision.

FISHERMEN'S GUARANTY FUND

Amendment No. 108: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $900,000 for the Fishermen's Guaranty Fund. The House bill contained no similar provision.

GENERAL PROVISIONS—DEPARTMENT OF STATE

Amendment No. 109: Deletes language proposed by the Senate regarding reprogrammings submitted to the Committees on Appropriations.

The conferees are concerned that the reprogramming requests submitted to the Committees on Appropriations do not provide adequate explanations of the impact that such reprogrammings would have on the programs, projects, activities, subactivities or bureaus from which funds and/or positions are transferred. Therefore, the conferees direct the Department of State to submit to the House and Senate Committees on Appropriations a report by December 1, 1989 which includes a description of the accounting system needed to provide this reprogramming information and the cost and length of time required to establish such a system. If the Department does not submit an adequate report, the Appropriations Committees intend to pursue this matter through appropriate legislative action at the earliest possible opportunity.

Amendment No. 110: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of matter inserted by said amendment insert the following:

SEC. 302. For fiscal year 1992, the Department of State shall submit a budget justification document to the Committees on Appropriations which provides function, subfunction, and object class information for each activity, subactivity, and bureau within the Department.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts a general provision which changes the section number and requires the Department, for Fiscal Year 1992, to submit a budget justification document which provides function, subfunction, and object class information for each activity, subactivity, and bureau within the Department. The Senate had proposed a general provision requiring this information for fiscal year 1991 as well as for each program and project within the Department. The House bill contained no similar provision.

Amendment No. 111: Deletes language proposed by the Senate which would have repealed section 725 of the International Security and Development Cooperation Act of 1981. Section 725 imposed economic sanctions on Argentina. The House bill contained no similar provision.

TITLE IV—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

Amendment No. 112: Appropriates $17,434,000 as proposed by the Senate instead of $17,313,000 as proposed by the House. The conference agreement provides for the full budget request plus an increase of $106,000 to meet the secretarial needs of the Justices and $15,000 for an oil portrait of the former Chief Justice.

Amendment No. 113: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which earmarks $15,000 for the procurement of an oil portrait of former Chief Justice Warren E. Burger to be placed in the Supreme Court Building, and allows for up to $10,000 for official reception and representation expenses. The House bill contained no similar provision.

CARE OF THE BUILDING AND GROUNDS

Amendment No. 114: Appropriates $4,400,000 instead of $3,300,000 as proposed by the House and $5,547,000 as proposed by the Senate.

The conference provides for the full budget request, except for structural repairs to Supreme Court terrace areas and stairs which is funded at only $1,031,000 of the requested $2,400,000. In addition, $70,000 is provided within the base for water and sewage billings from the District of Columbia.

Amendment No. 115: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment insert the following: , *of which $2,121,000 shall remain available until expended: Provided, That for fiscal year 1990 and hereafter, funds appropriated under this heading shall be available for improvements, maintenance, repairs, equipment,*

supplies, materials, and appurtenances; special clothing for workmen; and personal and other services (including temporary labor without regard to the Classification and Retirement Acts, as amended); and for snow removal by hire of men and equipment or under contract, and for the replacement of electrical transformers containing polychlorinated biphenyls, both without compliance with section 3709 of the Revised Statutes, as amended (42 U.S.C. 5)

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides a permanent provision as proposed by the Senate which allows the Architect of the Capitol to perform maintenance and repair of the Supreme Court Building and for electrical transformers, and makes $2,121,000 available for major repair projects until expended instead of $3,338,000 for this purpose as proposed by the Senate. The House bill contained no similar provision.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

Amendment No. 116: Appropriates $8,830,000 as proposed by the House instead of $8,600,000 as proposed by the Senate.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$1,287,424,000 (including the purchase of firearms and ammunition)*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $1,287,424,000 instead of $1,349,803,000 as proposed by the House and $1,289,924,000 as proposed by the Senate. The conference agreement includes Senate language contained in previous appropriations Act which allows the Courts to spend funds for the purchase of firearms and ammunition. The House bill contained no similar provision.

This appropriation account will have a total of $1,407,974,000 available for obligation in fiscal year 1990 as follows:

New budget authority, H.R. 2991	$1,287,424,000
New budget authority, H.R. 3015	59,550,000
Fees	61,000,000
Total	1,407,974,000

The $1,407,974,000 provided allows for the full request for adjustments to base and built-in changes and the following program increases:

President's violent crime initiative	$26,936,000
Sentencing guidelines (400 positions)	11,000,000
Magistrates and staff (57 positions)	1,460,000
Circuit executives (27 positions)	790,000
Clerks offices (885 positions)	12,407,000
Probation/Pretrial offices (325 positions)	13,183,000
Library system (50 positions)	1,000,000
Electronic court recording (100 positions)	1,700,000
Pretrial services	850,000
Court automation activities	45,356,000
Training by Federal Judicial Center	1,000,000
Child care, court appointed counsel, videotaping, financial audits, training	850,000

The conference agreement fully funds the Courts' fiscal year 1990 request of $71,376,000 for automation. The conferees expect that this full amount will be deposited into the Judiciary Automation Fund as authorized in section 404 of this Act.

The conferees agree that funds made available in this appropriation may be utilized to reimburse the Federal Judicial Center for any unfunded training costs associated with the new court positions authorized in fiscal year 1990.

Amendment No. 118: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which includes language earmarking $500,000 for acquisition of books and other legal reference materials and $2,500,000 for reimbursement to the claims Court for expenses associated with processing cases under the National Childhood Vaccine Injury Act. The House bill contained no similar provision.

DEFENDER SERVICES

Amendment No. 119: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$86,627,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $86,627,000 instead of $133,260,000 as proposed by the House and $118,787,000 as proposed by the Senate for Defender Services for fiscal year 1990.

The conference agreement of $86,627,000, when added to the $41,373,000 included in Title IV of H.R. 3015, will provide Defender Services with a total appropriation of $128,000,000 for fiscal year 1990, which allows for the full budget request adjusted for the new method of obligating funds.

Amendment No. 120: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which provides for the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfer from the U.S. to foreign countries with which the U.S. has a treaty for the execution of penal sentences. The House bill contained no similar provision.

FEES OF JURORS AND COMMISSIONERS

Amendment No. 121: Deletes language proposed by the Senate with regard to refreshment of jurors. This matter is addressed in Amendment No. 122.

Amendment No. 122: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In the lieu of the matter stricken and inserted by said amendment, insert: *$54,700,000, to remain available until expended: Provided, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code: Provided further, That for fiscal year 1990 and herafter, funds appropriated under this heading shall be available for refreshment of jurors.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $54,700,000 as proposed by the Senate instead of $58,700,000 as proposed by the House. When the amount in the conference agreement is added to the $4,000,000 included in Title IV of H.R. 3015, a total of $58,700,000 is available for obligation, the full amount requested for fiscal year 1990. The conference agreement also includes language proposed by the Senate which provides for the extended availability of funds and contains prior year language with respect to rates of pay for land commissioners. The conference agreement also includes a permanent provision not contained in either the House or Senate bills which provides for the refreshment of jurors.

COURT SECURITY

Amendment No. 123: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $43,090,000 for Court Security for fiscal year 1990. The House bill contained no similar provision.

The conference agreement also includes language contained in previous appropriations Acts which allows for use of funds for necessary expenses for court security and provides for the transfer of funds to the Marshals Service.

The conference agreement of $43,090,000, when added to the $15,400,000 included in Title IV of H.R. 3015, provides $58,490,000 for fiscal year 1990 for Court Security, the total amount requested.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$34,670,000" named in said amendment, insert the following: *$33,670,000.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $33,670,000 for expenses of the Administrative Office, instead of $32,670,000 as proposed by the House and $34,670,000 as proposed by the Senate. The conference agreement also includes language proposed by the Senate which earmarks $5,000 for official reception and representation expenses, and allows for advertising and rent in the District of Columbia and elswhere. The House bill contained no similar provision.

The conference agreement provides for requested adjustments to base and built-in changes, and program increases of $1,000,000 for the President's violent crime initiative and $875,000 and 37 positions for administrative support of the Courts.

JUDICIAL RETIREMENT FUNDS

PAYMENT TO JUDICIAL OFFICERS' RETIREMENT FUND

Amendment No. 125: Appropriates $6,500,000 as proposed by the Senate instead of $4,000,000 as proposed by the House. The conference agreement provides $4,000,000 for annuity payments of Bankruptcy Judges and magistrates and

$2,500,000 for the Judicial Survivors Annuity Fund.

GENERAL PROVISIONS—THE JUDICIARY

Amendment No. 126: Reported in technical disagreement. The managers on the part of the House will ofer a motion to recede and concur in the Senate amendment which adds a general provision, Sec. 402, contained in previous appropriations Acts which authorizes appropriations for the Temporary Emergency Court of Appeals and the Special Court established under the Regional Rail Reorganization Act of 1973. The House bill contained no similar provision.

Amendment No. 127: Deletes language proposed by the Senate (Sec. 403) which contained previous language providing that Trustee Coordinator positions not be limited to lawyers. The House bill contained no similar provision. This language is obsolete since this function has been transferred from the U.S. Courts to the United States Trustees.

Amendment No. 128: reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the section designation in said amendment, insert: *403*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language (Senate Sec. 404) contained in previous appropriations Acts which precludes the Administrative Office from restricting to Bankruptcy Court clerks the issuance of notices to creditors. The conference agreement makes this Sec. 403 and also makes this a permanent provision. The House bill contained no similar provision.

Amendment No. 129: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by said amendment insert the following:

SEC. 404. (a) For fiscal year 1990 and hereafter, such fees as shall be collected for the preparation and mailing of notices in bankruptcy cases as prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1930(b) shall be deposited to the "Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses" appropriation to be used for salaries and other expenses incurred in providing these services.

(b) JUDICIARY AUTOMATION FUND.—

(1) ESTABLISHMENT AND USE OF FUND.—Chapter 41 of title 28, United States Code, is amended by adding at the end of the following new section: "Section 612. Judiciary Automation Fund

"(a) ESTABLISHMENT AND AVAILABILITY OF FUND.—There is hereby established in the Treasury of the United States a special fund to be known as the 'Judiciary Automation Fund' (hereafter in this section referred to as the 'Fund'). Moneys in the Fund shall be available to the Director without fiscal year limitation for the procurement (by lease, purchase, exchange, transfer, or otherwise) of automatic data processing equipment for the judicial branch of the United States. The Fund shall also be available for expenses, including personal services and other costs, for the effective management, coordination, operation, and use of automatic data processing equipment in the judicial branch.

"(b) PLAN FOR MEETING AUTOMATIC DATA PROCESSING NEEDS.—

"(1) DEVELOPMENT OF PLAN.—The Director shall develop and annually revise, with the approval of the Judicial Conference of the United States, a long range plan fro meeting the automatic data processing equipment needs of the judicial branch. Such plan and revisions shall be submitted to Congress.

"(2) EXPENDITURES CONSISTENT WITH PLAN.—The Director may use amounts in the Fund to procure automatic data processing equipment for the judicial branch of the United States only in accordance with the plan developed under paragraph (1).

"(c) DEPOSITS INTO FUND.—

"(1) DEPOSITS.—There shall be deposited in the Fund—

"(A) all proceeds resulting from activities conducted under subsection (a), including net proceeds of disposal of excess or surplus property and receipts from carriers and others for loss of or damage to property;

"(B) amounts available for activities described in subsection (a) from funds appropriated to the judiciary; and

"(C) any advances and reimbursements required by paragraph (2).

"(2) ADVANCES AND REIMBURSEMENTS.—Whenever the Director procures automatic data processing equipment for any entity in the judicial branch other than the courts or the Administrative Office, that entity shall advance or reimburse the Fund, whichever the Director considers appropriate, for the costs of the automatic data processing equipment, from appropriations available to that entity.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund for any fiscal year such sums as are required to supplement amounts desposited under subsection (c) in order to conduct activities under subsection (a).

"(e) CONTRACT AUTHORITY.—

"(1) FOR EACH FISCAL YEAR.—(A) In fiscal year 1990, and in each succeeding fiscal year, the Director may enter into contracts for the procurement of automatic data processing equipment in amounts which, in the aggregate, do not exceed $75,000,000 in advance of the availability of amounts in the Fund for such contracts.

"(2) MULTIYEAR CONTRACTS.—In conducting activities under subsection (a), the Director is authorized to enter into multiyear contracts for automatic data processing equipment for periods of not more than five years for any contract, if—

"(A) funds are available and adequate for payment of the costs of such contract for the first fiscal year and for payment of any costs of cancellation or termination of the contract;

"(B) such contract is awarded on a fully competitive basis; and

"(C) the Director determines that—

"(i) the need for the automatic data processing equipment being provided will continue over the period of the contract; and

"(ii) the use of the multi-year contract will yield substantial cost savings when compared with other methods of providing the necessary resources.

"(3) Cancellation Costs of Multiyear Contract.—Any cancellation costs incurred with respect to a contract entered into under paragraph (2) shall be paid from currently available amounts in the Fund.

"(f) APPLICABILITY OF PROCUREMENT STATUTE.—The procurement of automatic data processing equipment under this section shall be conducted in compliance with section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759).

"(g) AUTHORITY OF ADMINISTRATOR OF GENERAL SERVICES.—Nothing in this section shall be construed to limit the authority of the Administrator of General Services under sections 111 and 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 and 759).

"(h) ANNUAL REPORT.—The Director shall submit to the Congress an annual report on the operation of the Fund, including on the inventory, use, and acquisition of automatic data processing equipment from the Fund and the consistency of such acquisition with the plan prepared under subsection (b). The report shall set forth the amounts deposited into the Fund under subsection (c).

"(i) REPROGRAMMING.—The Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States, and upon notification to the Committees on Appropriations of the House of Representatives and the Senate, may use amounts deposited into the Fund under subparagraph (c)(1)(B) for purposes other than those established in subsection (a) only by following reprogramming procedures in compliance with provisions set forth in Section 606 of Public Law 100-459.

"(j) APPROPRIATIONS INTO THE FUND.—If the budget request of the Judiciary is appropriated in full, the amount deposited into the Fund during any fiscal year under the authority of subparagraph (c)(1)(B) will be the same as the amount of funds requested by the Judiciary for activities described in subsection (a). If an amount to be deposited is not specified by Congress and if the full request is not appropriated, the amount to be deposited under (c)(1)(B) will be set by the spending priorities established by the Judicial Conference.

"(k) DEFINITION.—For purposes of this section, the term "automatic data processing equipment" has the meaning given that term in section 111(a)(2)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)(A)).

"(l) TERMINATION OF AUTHORITY.—The Fund, and the authorities conferred by this section, terminate on September 30, 1994. All unobligated amounts remaining in the Fund on that date shall be deposited into the "Judicial Services Account" to be used to reimburse other appropriations.

"(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 41 of title 28, United States Code, is amended by adding at the end the following new item: "612. Judiciary Automation Fund."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts a general provision, Sec. 404, proposed by the Senate (Sec. 405) which establishes procedures for deposit and use of bankruptcy fees. The conference agreement also adds new language to establish a Judiciary Automation Fund. This Fund will be available to the Judicial branch for purchase of ADP equipment and for expenses related to management, coordination, operation and use of the equipment. The House bill contained no similar provisions.

Amendment No. 130: Deletes language proposed by the Senate (Sec. 406) which provided that comparable cost-of-living increases be given to judges as are provided to other Federal employees.

Amendment No. 131: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the section designation in said amendment, insert: *405*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts a general provision, Sec. 405 proposed by the Senate (Sec. 407), which makes funds appropriated to the Judiciary available for the Judicial Conference of the U.S. to sponsor and host the Fifth International Appellate Judges Conference in the U.S.; permits the Judicial Conference to supplement such funds with other funds made available by other government agencies and private sources; provides for local travel and other expenses of foreign participants; provides that funds for commemorating the bicentiennial or for salaries and expenses of the Judiciary shall not be made available for travel and other expenses of dependents; and does not preclude payments for the travel or other expenses of foreign participants and their dependents by any other department or agency. The House bill contained no similar provision.

Amendment No. 132: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by said amendment insert the following:

SEC. 406 (a). Section 1930(a)91) of title 28, United States Code, is amended by striking out "$90" and inserting in lieu thereof "$120". Pursuant to section 1930(b) of title 28, the Judicial Conference of the United States shall prescribe a fee of $60 on motions seeking relief from the automatic stay under 11 U.S.C. section 362(b) and motions to compel abandonment of property of the estate. The fees establishment pursuant to the preceding two sentences shall take effect 30 days after the enactment of this Act.

(b) All fees as shall be hereafter collected for any service enumerated after item 18 of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. section 1930(b) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931 and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.

(c) Section 589a(b)(1) of title 28, United States Code, is amended by striking out "one-third" and inserting in lieu thereof "one-fourth".

(d) Section 1931 of title 28, United States Code, is amended by striking out the following before the colon "as provided in annual appropriation acts."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts a general provision, Sec. 406, proposed by the Senate which raises bankruptcy filing fees from $90 to $120; prescribes a fee of $60 on motions seeking relief for the automatic stay under 11 U.S.C. Section 362(b); and provides the Judiciary with authority to reimburse the special fund of the Treasury established under 28 U.S.C., Section 1931 with fees collected for any services added to the current bankruptcy miscellaneous fee schedule by the Judicial Conference of the U.S. The conference agreement also inserts new language which amends 28 U.S.C. 589a(b)(1) in order to allow the U.S. Trustees System Fund to continue to receive $30 of the amount collected for each bankruptcy filing fee. The conference agreement also inserts new language which amends 28 U.S.C. 1931 to allow for the additional expenses associated with the Court Automation Fund. The House bill contained no similar provision.

Amendment No. 133: Deletes language proposed by the Senate which amended title 28 of the United States Code to raise the mandatory retirement age for the Director of the Federal Judicial Center from 70 to 75. The House bill contained no similar provision.

TITLE V—RELATED AGENCIES

MARITIME ADMINISTRATION

Amendment No. 134: Inserts a heading as proposed by the Senate.

OPERATING-DIFFERENTIAL SUBSIDIES

(LIQUIDATION OF CONTRACT AUTHORITY)

Amendment No. 135: Reported in technical disagreement. The managers on the part of the House will move to concur in the amendment of the Senate which appropriates $225,870,000 to liquidate contract obligations incurred for operating-differential subsidies of American flag vessels. The House bill contained no similar provision.

OPERATIONS AND TRAINING

Amendment No. 136: Reported in technical disagreement. The managers on the part of the House will move to concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, $65,050,000, to remain available until expended, and in addition $2,250,000 shall be derived from unobligated balances of "Ship Construction": Provided, That reimbursement may be made to this appropriation from receipts to the "Federal Ship Financing Fund" for administrative expenses in support of that program in addition to any amount heretofore appropriated.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $65,050,000 in new budget authority for operations and training instead of $64,050,000 as proposed by the Senate. The conference agreement also provides that $2,250,000 shall be derived from unobligated balances of "Ship Construction", and allows reimbursements to be made to this appropriation from the Federal Ship Financing Fund for certain administrative expenses as proposed by the Senate. The House bill contained no similar provisions.

READY RESERVE FORCE

Amendment No. 137: Reported in technical disagreement. The managers on the part of the House will move to concur in the amendment of the Senate with an amendment as folllows:

In lieu of the sum named in said amendment insert the following: *$89,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $89,000,000 for the Ready Reserve Force instead of $106,600,000 as proposed by the Senate. The conference agreement also provides that for reimbursements to be made to operations and training appropriation for expenses related to the National Defense Reserve Fleet as proposed by the Senate. The House bill contained no similar provisions.

The conference agreement assumes $59,450,000 for operations and maintenance and $29,550,000 for ship acquisition.

ARMS CONTROL AND DISARMAMENT AGENCY

ARMS CONTROL AND DISARMAMENT ACTIVITIES

Amendment No. 138: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $33,876,000 for the Arms Control and Disarmament Agency and includes language providing up to $55,000 for official reception and repesentation expenses. The House bill contained no similar provision.

The conferees are agreed that up to $750,000 of the appropriation be used for preparatory meetings of the Non-Proliferation Treaty Review Conference and $250,000 be allocated from the Department of State for this purpose.

BOARD FOR INTERNATIONAL BROADCASTING

Amendment No. 139: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading. The House bill contained no similar provision.

GRANTS AND EXPENSES

Amendment No. 140: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$195,000,000" named in said amendment insert the following: *$190,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $190,000,000 for grants and expenses of the Board for International Broadcasting instead of $195,000,000 as proposed by the Senate. The conference agreement also provides for up to $52,000 for offical reception and repesentation expenses as proposed by the Senate. The House bill contained no similar provisions.

ISRAEL RELAY STATION

Amendment No. 141: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $183,500,000 for the Israel Relay Station. The House bill contained no similar provision.

COMMISSION ON AGRICULTURAL WORKERS

SALARIES AND EXPENSES

Amendment No. 142: Appropriates $300,000 for the Commission on Agricultural Workers as proposed by the Senate instead of $500,000 as proposed by the House. The conference agreement assumes the availability of $200,000 in prior year unobligated balances.

Amendment No. 143: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede

and concur in the Senate amendment which provides for extended availability of funds for the Commission. The House bill contained no similar provision.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

SALARIES AND EXPENSES

Amendment No. 144: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which extends the availability of funds and authorizes the Commission to enter into contracts, grants or cooperative agreements. The conference agreement also earmarks $705,000 to be available for the purchase of the historic landmark house and surrounding 25 acres to establish the Charles Pinckney National Historic Site as proposed by the Senate. The House bill contained no similar provisions.

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

Amendment No. 145: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $5,707,000 for the salaries and expenses of the Civil Rights Commission for FY 1990. The conference agreement also includes earmarks and limitations on use of Commission funds as proposed by the Senate, which are identical to those contained in the fiscal year 1989 Appropriations Act. The House bill contained no similar provisions.

COMMISSION ON THE UKRAINE FAMINE

Amendment No. 146: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $100,000 for close out expenses of the Commission. The House bill contained no similar provision.

COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Amendment No. 147: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which provides for extended availability of funds for the Commission. The House bill contained no similar provision.

COMPETITIVENESS POLICY COUNCIL

SALARIES AND EXPENSES

Amendment No. 148: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$750,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $750,000 for the Competitiveness Policy Council for FY 1990 instead of $1,000,000 as proposed by the Senate. The House bill contained no similar provision.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

Amendment No. 149: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which delays until October 1, 1990, implementation of a rule allowing unsupervised waivers under the Age Discrimination in Employment Act (ADEA) and precludes the EEOC from implementing additional rules regarding unsupervised waivers of ADEA rights. The House bill contained no similar provision. The conference agreement provides $1,000,000 for the Congressionally mandated study on the validity of fitness tests for police and firefighters.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

Amendment No. 150: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$109,831,000" named in said amendment insert the following: *$109,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $109,000,000 for the Federal Communications Commission for fiscal year 1990 instead of $190,831,000 as proposed by the Senate. The conference agreement also includes certain language provisions governing the use of funds as proposed by the Senate. The House bill included no similar provisions.

The conference agreement includes $30,000 for the FCC to subscribe to the Rutgers University Wireless Information Network Laboratory. The conferees expect the Commission to move expeditiously to subscribe to this important technical information source.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

Amendment No. 151: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which limits funds for official reception and representation expenses to $1,500. The House bill contained no similar provision.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

Amendment No. 152: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$64,580,000" named in said amendment insert *$54,580,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $54,580,000 and maintains certain restrictions from the Federal Trade Commission Improvements Act of 1980, and allows for up to $2,000 for official reception and representation expenses. The Senate bill contained $64,580,000 and the language restrictions contained in the conference agreement. The House bill contained no similar provisions.

In addition to the funds provided in this amendment for the Commission, the Commission will be authorized to collect and retain $20,000,000 in certain fees under the provisions of Amendment No. 176. Thus, the Commission should have a total of $74,580,000 available for FY 1990, an increase of $5,000,000 above the budget request.

INTERNATIONAL TRADE COMMISSION

SALARIES AND EXPENSES

Amendment No. 153: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $39,000,000 for the International Trade Commission for fiscal year 1990 and includes up to $2,500 for official reception and representation expenses. The House bill contained no similar provision.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

Amendment No. 154: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, $321,000,000 of which $274,965,000 is for basic field programs, $7,304,000 is for Native American programs, $10,088,000 is for migrant programs, $1,144,000 is for law school clinics, $1,040,000 is for supplemental field programs, $649,000 is for regional training centers, $7,518,000 is for national support, $8,158,000 is for State support, $900,000 is for the Clearinghouse, $531,000 is for computer assisted legal research regional centers, and $8,703,000 is for Corporation management and administration.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate bill provided $321,000,000 for the Legal Services Corporation and certain earmarkings of the funds for each component of the Corporation's budget. The House bill contained no similar provisions.

The conference agreement retains the $321,000,000 proposed by the Senate and earmarks the funds as follows:

[In thousands of dollars]

	Fiscal year—1989 enacted	Fiscal year—1990 budget	House	Senate	Conference
Basic field programs	$264,349	$275,047		$275,306	$274,965
Native American program	7,002	7,002		7,313	7,304
Migrant programs	9,698			10,100	10,088
Law school clinics	1,100	1,100		1,146	1,144
Supplemental field programs	1,000			1,041	1,040
Regional training centers	624			650	649

[In thousands of dollars]

	Fiscal year—1989 enacted	Fiscal year—1990 budget	House	Senate	Conference
National support	7,228			7,528	7,518
State support	7,843			8,168	8,158
Clearinghouse	865			901	900
Computer Assisted Legal Research (CALR) regional centers	510			531	531
Corporation management and administration	8,316	12,145		8,316	8,703
Total	308,555	295,314		321,000	321,000

The conference agreement also deletes language proposed by the Senate which would have earmarked $5,000,000 for basic field programs to be used to assist public housing authorities, school boards, and others to expel from housing or school areas individuals engaged in drug-related criminal activity. The House bill contained no similar provision. While the conferees strongly support the intent of this provision, the varying needs and demands in different parts of the nation make it desirable to leave some flexibility in addressing this problem at the local level. The conferees, however, believe basic field programs and schools free from drug-related activity. Accordingly, each basic field program shall, during the priority-setting process required by section 1007(a)(2)(C) of the Legal Services Corporation Act, assess the needs of eligible clients for assistance in this area and the program's ability to provide such assistance within existing law, and give such anti-drug efforts a high priority where warranted. In addition, the Corporation is directed to submit a report to the House and Senate Committees on Appropriations describing the ongoing and planned efforts by the local programs to provide such assistance by May 1, 1990.

The conference agreement assumes that $1,700,000 of funds carried over from FY 1989 are available to the Corporation for management and administration. The Corporation is directed to submit a report to the House and Senate Appropriations Committees regarding the source of any carryover funds and, to the extent the total amount exceeds $1,700,000, to submit a reprogramming pursuant to section 606 of this Act regarding any proposed use of such excess amount.

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

SALARIES AND EXPENSES

Amendment No. 155: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $300,000 for the Commission. The House bill contained no similar provision.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SALARIES AND EXPENSES

Amendment No. 156: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$18,830,000" named in said amendment, insert the following: *$18,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $18,000,000 for the U.S. Trade Representatives for FY 1990 instead of $18,830,000 as proposed by the Senate. The House bill contained no similar provision.

The conferees are concerned that an adequate level of funds be maintained for this important office so that the ability of the United States to combat our massive trade deficit is not impaired. Enactment of the Omnibus Trade Bill last year, of which the implementation of a significant portion is handled by the USTR, has substantially increased the workload of this office. At the same time, the USTR is also involved in the last stages of the Uruguay Round of Multilateral Trade Negotiations, the most ambitious trade talks engaged in by the United States. USTR is also responsible for the implementation and follow up negotiations of the U.S.-Canada Free Trade Agreement. The conferees have provided the fullest amount possible within the overall allocation for this bill. If additional resources are required, suitable financial adjustments will have to be considered.

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

Amendment No. 157: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $168,707,000 for the Commission and provides for up to $3,000 for official reception and representation expenses and limits to $10,000 the amount to be used toward funding a permanent secretariat for the International Organizations of Securities Commissions.

The conferees are concerned about the backlog in the processing of the filings of the public utility holding companies. The 1988 backlog was 34, and the SEC projects it to grow to 79 in 1989 and 139 in 1990. The conferees direct that $500,000 and the appropriate additional professional staff positions be added to this area to get and keep current with the backlog.

The conference agreement also includes language proposed by the Senate requiring the SEC to raise the rate of fees under section 6(b) of the Securities Act of 1933 from one-fiftieth to one-fortieth of 1 percent, and provides that the amounts to be collected by this increase are to be deposited in the general fund of the Treasury and are considered offsetting receipts to this appropriation. The House bill contained no similar provisions.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 158: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$242,000,000, of which $500,000 shall be made available for a grant to St. Norbert College in De Pere, Wisconsin, for a regional center for rural economic development, and of which $500,000 shall be made available for the establishment of a training program at the East-West Center to assist American businessmen and trade delegations in the Pacific basin, and of which $1,500,000 shall be made available for a grant to the University of Kentucky's Somerset Community College for a regional center for rural economic development with a special emphasis on small business and*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $242,000,000 instead of $240,545,000 as proposed by the House and $239,136,000 as proposed by the Senate. The conference agreement includes new language not included in either the House or Senate bills earmarking funds for grants to St. Norbert College, the East-West Center and the University of Kentucky's Somerset College for certain small business development activities.

The conference agreement includes the following amounts with appropriate comparisons:

[In thousands of dollars]

	House Allowance	Senate Allowance	Conference
Finance and investment	$58,499	$58,499	$58,499
Procurement assistance	17,633	18,633	17,633
Minority small business/cod	26,262	27,030	27,030
7(j)	(8,080)	(8,848)	(8,848)
8(a) Commission	(500)	(500)	(500)
Innovation, research, and technology	1,232	1,232	1,232
Advocacy	5,357	5,357	5,357
Special programs	79,970	74,370	79,470
SBDC	(50,000)	(45,000)	(50,000)
SCORE	(2,500)	(2,500)	(2,500)
International trade	(500)	(2,500)	(1,500)
Veterans outreach	(465)	(465)	(465)
Rural economic development	(1,100)		(1,500)
Women's Business outreach	(3,000)	(2,000)	(2,000)
Women's Council	(500)	(500)	(500)
Other	(21,905)	(21,405)	(21,005)
Management and administration	76,344	78,767	77,531
General Counsel	15,849	15,849	15,849
Hearings and appeals	1,004	1,004	1,004
Public communications	1,251	1,251	1,251
Congressional and legislative affairs	565	565	565
Executive direction & field admin	33,739	33,739	33,739
Disaster assistance	19,000	19,000	19,000
Total	336,705	335,296	338,160
Transfer from Disaster Loan Fund	−96,160	−96,160	−96,160
Appropriation	240,545	239,136	242,000

The conference agreement also provides $400,000 for the Women's Outreach Commission.

The conferees note that at the present time the Small Business Administration serves approximately 1.6 million people through the Buffalo, New York, Branch office and another 1 million people through a post of duty station in Rochester, New York. Both of these offices report to the Syracuse district office, about 200 miles away. Since approval of the district office is required for many actions, the current structure somewhat handicaps the providing of assistance to small businesses in the areas involved. The conferees believe that it

would be beneficial to upgrade the Buffalo and Rochester offices and note that doing so and attaching the Rochester office to Buffalo would be appropriate from a geographic standpoint and would result in a district office serving some 2.6 million people. In terms of population, the new area would be larger than 20 states. Accordingly, the conferees direct the Administration to upgrade the branch office in Buffalo, New York, to a district office, including the territory of Rochester, New York, within its jurisdiction, and upgrade the post of duty station in Rochester to a branch office.

Amendment No. 159: Appropriates $50,000,000 for Small Business Development centers as proposed by the House instead of $45,000,000 as proposed by the Senate.

Amendment No. 160: Deletes $96,100,000 proposed by the House allowing for the transfer of funds from the Disaster Loan Fund for disaster loan making activities and inserts language proposed by the Senate allowing such sums as may be necessary for this purpose.

OFFICE OF INSPECTOR GENERAL

Amendment No. 161: Appropriates $7,400,000 as proposed by the House instead of $7,552,000 as proposed by the Senate.

BUSINESS LOAN AND INVESTMENT FUND

Amendent No. 162: Appropriates $82,000,000 instead of $87,000,000 as proposed by the House and $78,000,000 as proposed by the Senate.

The following table shows the conference agreement with appropriate comparisons:

[In thousands of dollars]

Lending programs	Fiscal year 1989 appropriation	Fiscal year 1990			
		Authorized	House	Senate	Conference
General business 7(a)	$2,621	$2,930	$2,450	$3,200	$3,200
Guaranteed	(2,621)	(2,930)	(2,450)	(3,200)	(3,200)
Handicapped 7(a)(10)	17	23	17	15	12
Direct	(12)	(18)	(12)	(15)	(12)
Guaranteed	(5)	(5)	(5)	(1)	(1)
Economic opportunity 7(a)(11)	57	93	57	15	17
Direct	(17)	(25)	(17)	(15)	(17)
Guaranteed	(40)	(68)	(40)	(1)	(1)
Energy 7(a)(12)	5	62	5		
Guaranteed	(5)	(62)	(5)	(1)	(1)
Veterans Public Law 97–72: Title III	17	22	17	17	17
Direct	(17)	(22)	(17)	(17)	(17)
Development company: SBIA Title V	365	478	415	478	478
Guaranteed	(365)	(478)	(415)	(478)	(478)
Investment company: SBIA Title III	154	324	154	322	
Direct [MESBIC]	(36)	(41)	(36)	(23)	(31)
Guaranteed [SBIC]	(118)	(283)	(118)	(249)	(249)
Guaranteed [MESBIC]				(50)	(50)
Section 8(a): Public Law 100–656	5	10	5	8	8
Direct	(5)		(5)	(8)	(5)
Guaranteed				(1)	(1)
Total business	3,241	[2] 3,942	3,120	4,055	4,059
Direct	(87)	(106)	(87)	(78)	(82)
Guaranteed	(3,154)	(3,826)	(3,033)	(3,977)	(3,977)

[1] These programs are funded out of general business loan guarantees.
[2] Includes $10,000,000 for section 8(a) authorized as both direct and guaranteed.

POLLUTION CONTROL EQUIPMENT CONTRACT GUARANTEE REVOLVING FUND

Amendment No. 163: Restores language proposed by the House but stricken by the Senate which appropriates $13,000,000 for the Pollution control equipment contract guarantee revolving fund and provides for the extended availability of the funds.

ADMINISTRATIVE PROVISIONS

Amendment No. 164: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendnent of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

ADMINISTRATIVE PROVISIONS

(1) Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended to read as follows:

"(2) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be—

"(A) not less than 90 percent of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $155,000: Provided, That the percentage of participation by the Administration may be reduced below 90 percent upon request of the participating lender; and

"(B) subject to the limitation in paragraph (3)—

"(i) not less than 70 percent nor more than 85 percent of the financing outstanding at the time of disbursement if such financing exceeds $155,000: Provided, That the participation by the Administration may be reduced below 70 percent upon request of the participating lender; and

"(ii) not less than 85 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16); The Administration shall not use the percent of guarantee requested as a criterion for establishing priorities in approving guarantee requests nor shall the Administration reduce the percent guaranteed to less than 85 percent under subparagraph (B) other than by determination made on each application. Notwithstanding subparagraphs (A) and (B), the Administration's participation under the Preferred Lenders Program or any successor thereto shall be not less than 80 pecent, except upon request of the participating lender. As used in this subsection, the term 'Preferred Lenders Program' means a program under which a written agreement between the lender and the Administration delegates to the lender (I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (II) authority to service and liquidate such loans.".

(2) Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19) is amended to read as follows:

"(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not effect any outstanding guarantee.

"(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, during fiscal years 1989, 1990, and 1991, the Administration shall (i) develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans, and (ii) allow such lenders to retain one-half of the fee collected pursuant to section (7)(a)(18) on such loans. A participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless the amount in excess of $50,000 is an amount not approved under the provisions of this paragraph.".

(3) The last sentence of subparagraph (A) of section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1)) is amended to read as follows: "In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official.".

(4) Section 303 of the Small Business Investment Act of 1958 is amended by striking subsection (c) and inserting in lieu thereof the following new subsections:

"(c) Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under the authority of section 301(d) of this Act. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

"(1) The Administration may purchase shares of nonvoting stock (or other corporate securities having similar characteristics), provided—

"(A) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum, except as provided in paragraph (5);

"(B) on liquidation or redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (A) of this paragraph;

"(C) the purchase price shall be at par value and, in any one sale, $50,000 or more;

"(D) the amount of such securities purchased and outstanding at any one time shall not exceed—

"(i) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or

"(ii) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than $500,000, 100 per centum of such capital and surplus, or

"(iii) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of $500,000 or more, 200 per centum of such capital and surplus; and

"(E) the amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (i) or (iii) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities; for the purposes of this subsection, the

term 'equity securities' means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.

"(2) The Administration may purchase or guarantee debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided—

"(A) such debentures are issued for a term of not to exceed fifteen years;

"(B) the interest rate is determined pursuant to this section or section 317; and

"(C) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than $500,000 shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of $500,000 or more, 400 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

"(3) Debentures purchased and outstanding pursuant to section 303(b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(C) of this subsection (c).

"(4) The Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintain a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.

"(5) Notwithstanding the foregoing provisions of this subsection, securities purchased by the Administration on or after the effective date of this Act (A) shall provide that dividends shall be preferred and cumulative to the extent of 4 per centum of par value per annum and (B) shall include a provision requiring the issuer to redeem such securities, including any accrued and unpaid dividends, in 15 years from the date of issuance: Provided, That the Administration may, in its discretion, guarantee debentures in such amounts as will permit the simultaneous redemption of such securities, including such amounts as it deems appropriate to include all or any part of accrued and unpaid dividends: Provided further, That the Administration shall not pay any part of the interest on such debentures except pursuant to its guarantee in the event of default in payment by the issuer.

"(6) In no event shall the Administration purchase or guarantee debentures or securities if the amount of outstanding securities and debentures of a company operating under the authority of section 301(d) would exceed 400 per centum of its combined private paid-in capital and paid-in surplus or $35,000,000, whichever is less.

"(d) If the Administration guarantees debentures issued by a small business investment company, operating under authority of section 301(d) of this Act, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 321. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The aggregate amount of debentures with interest rate reductions as provided in this subsection or as provided in section 317 which may be outstanding at any time from any such company shall not exceed 200 per centum of the private paid-in capital and paid-in surplus of such company. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due.

"(e) In determining the private capital of a small business investment company, Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from the licensing by the Administration, providing such funds were invested prior to the effective date of this Act.

"(f) Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as provided in paragraph (5) of subsection (c) and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 301(d), to the extent and in the amounts provided in advance in appropriations acts.".

(5) Section 321(a) of the Small Business Investment Act of 1958 is amended by inserting after the word "companies" the following: ", including companies operating under the authority of section 301(d),".

(6) Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302), as amended, is further amended by striking "October 1, 1990" and by inserting in lieu thereof "October 1, 1991.".

(7) Notwithstanding any other provision of the Act, none of the funds appropriated or made available by this Act or otherwise appropriated or made available to the Small Business Administration shall be used to adopt, implement, or enforce any rule or regulation with respect to the Small Business Development Center program authorized by section 21 of the Small Business Act, as amended (15 U.S.C. 648) nor may any of such funds be used to improve any restrictions, conditions or limitations on such program whether by standard operating procedure, audit guidelines or otherwise, unless such restrictions, conditions or limitations were in effect on October 1, 1987, unless specifically approved by the Committees on Appropriations under reprogramming procedures except that this provision shall not apply to uniform common rules applicable to multiple Federal departments and agencies including the Small Business Administration; nor may any of such funds be used to restrict in any way the right of association or participants in such program.

(8) The funds made available by this Appropriations Act for Small Business Development Centers shall be available for grants for performance in fiscal year 1990 or fiscal year 1991.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate amendment inserted language which would have:

(1) transferred the assets of the Pollution Control Fund to the Business Loan and Investment fund;

(2) provided that continuing expenses of the fund, including payment of additional claims resulting from defaulted bonds guaranteed in prior years, will be paid from the business loan and investment fund;

(3) established a uniform SBA guaranteed percentage of 80 percent for all loans made under the Preferred Lenders Program;

(4) expanded the small loan program by making it applicable to all regular business loans, not just to Preferred and Certified Lenders Program loans;

(5) simplified recently enacted statutory restrictions on SBA's cosponsorship program to require that only appropriate recognition be given to SBA based on the amount of the Agency's participation in the venture; and

(6) allowed minority enterprise small business investment companies, which have previously sold debentures directly to SBA to participate in issuances of guaranteed debentures with other SBIC's. This provision would have permitted $50,000,000 of the $324,000,000 available for the total investment company program level for guarantees of MESBIC debentures.

The conference agreement deletes items (1) and (2), retains items (3), (4), and (5) and modifies (6) as described below.

The two sections dealing with changes in the MESBIC program basically restate existing law and practice except for three changes.

First, it would change the nature of the debenture assistance made available to MESBIC's. Under the current program, SBA purchases about $18 million in debentures and holds them in-house at an interest rate of 3 points below the federal cost of money for the first five years. Instead, the new section 303(d) would permit SBA to guarantee about $50 million per year in debentures which would be sold to private investors. SBA would pay 3 points of the interest for the first five years.

Second, the use of preferred stock purchases to finance MESBICs would be tightened up. Under the current program, SBA purchases about $18 million in preferred stock per year in MESBICs. The stock carries a 3-percent dividend. In the future, the new section 303(c)(5) would increase the dividend rate to 4 percent and would require the MESBIC-issuer to redeem it in 15 years.

Finally, the proposal would recognize that the outstanding preferred stock is not equiv-

alent to its par value because there is very little incentive for the MESBIC-issuer to redeem it, and thus there is no market for it. The new section 303(f) authorizes SBA to set a price at less than its par value, at which the Agency would sell the stock back to the MESBIC which issued it. The proceeds would be deposited in the business loan and investment revolving fund and used to fund future operations of the MESBIC program.

The conference agreement also inserts new language which makes certain technical changes in section 321(a) of the Small Business Investment Act of 1958.

The conference agreement also includes new language which will extend the Small Business Development Center program for one additional year and bring it in line with the other authorizations.

The conference agreement also includes new language which prohibits restrictions on the Small Business Development program which were not in effect on October 1, 1987, except for uniform common rules.

The conference agreement also includes new language which requires that funds appropriated by this appropriations Act for Small Business Development Centers shall be available for grants for performance in fiscal year 1990 or fiscal year 1991.

The House bill did not contain any provision on any of these matters.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

Amendment No. 165: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment insert: *$8,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $8,000,000 for the State Justice Institute instead of $11,233,000 as proposed by the House and $12,000,000 as proposed by the Senate. The amount in the conference agreement, when added to the $4,020,000 included in Title IV of H.R. 3015, provides the State Justice Institute with total funding of $12,020,000 for fiscal year 1990.

Amendment No. 166: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which provides that pursuant to section 7321(a) of Public Law 100-690, appropriations for the Institute are authorized through fiscal year 1991, and shall remain available until expended. The House bill contained no similar provision.

UNITED STATES INFORMATION AGENCY

Amendment No. 167: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts a heading.

SALARIES AND EXPENSES

Amendment No. 168: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following

SALARIES AND EXPENSES

For expenses, not otherwise provided for, necessary to enable the United States Information Agency, as authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 et seq.), the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 et seq.) and Reorganization Plan No. 2 of 1977 (91 Stat. 1636), to carry out international communication, educational and cultural activities; and to carry out related activities authorized by law, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed $700,000, of this appropriation), as authorized by 22 U.S.C. 1471, expenses authorized by the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.), living quarters as authorized by 5 U.S.C. 5912, and allowances as authorized by 22 U.S.C. 1474(3); $638,569,000, none of which shall be restricted from use for the purposes appropriated herein: Provided, That not less than $32,800,000 shall be available for the Television and Film Service notwithstanding Section 209(e) of Public Law 100-204: Provided further, That not to exceed $1,210,000 may be used for representation abroad as authorized by 22 U.S.C. 1452 and 4085: Provided further, That not to exceed $12,902,000 of the amounts allocated by the United States Information Agency to carry out section 102(a)(3) of the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2452(a)(3)), shall remain available until expended: Provided further, That not to exceed $500,000 shall remain available until expended as authorized by 22 U.S.C. 1477(b), for expenses (including those authorized by the Foreign Service Act of 1980) and equipment necessary for maintenance and operation of data processing and administrative services as authorized by 31 U.S.C. 1535-1536: Provided further, That not to exceed $6,000,000 may be credited to this appropriation from fees or other payments received from or in connection with English teaching, library, motion pictures, television, and publication programs as authorized by section 810 of the United States Information and Educational Exchange Act of 1948, as amended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $638,569,000 instead of $647,875,000 as proposed by the Senate. The conference agreement also includes certain language provisions as proposed by the Senate and new language not included in either the House or Senate bills earmarking not less than $32,800,000 for WORLDNET notwithstanding Section 209(e) of Public Law 100-204. The House bill contained no provisions on any of these matters.

The conference agreement includes the following:

[In thousands of dollars]

	Fiscal year 1989 Enacted	Fiscal year 1990 Budget	House	Senate	Conference
Voice of America	$169,724	$170,235	Defer	$171,224	$171,224
Television and film service	38,500	36,300	Defer	31,000	32,800
Educational & cultural affairs	36,475	36,220	Defer	36,326	36,720
Seville World's Fair	400	5,000	Defer	4,000	
Other S&E (Missions, etc.)	371,751	407,313	Defer	405,325	397,825
Total	616,850	655,068	Defer	647,875	638,569

The conference agreement reflects currency gains in this account of $7,500,000.

OFFICE OF THE INSPECTOR GENERAL

Amendment No. 169: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $3,675,000. The House bill contained no similar provision.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

Amendment No. 170: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$160,300,000" named in said amendment insert: *$156,506,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $156,506,000 instead of $160,300,000 as proposed by the Senate. The conference agreement also provides $1,500,000 for the Eisenhower Exchange Fellowship program and provides for the extended availability of these funds as proposed by the Senate. The House bill contained no similar provisions.

The conference agreement includes the following amounts with appropriate comparisons:

[In thousands of dollars]

	Fiscal year 1989 Enacted	Fiscal year 1990 Budget	House	Senate	Conference
Academic Exchange Programs:					
Samantha Smith	$2,000	$2,000		$2,000	$2,000
All other academic	87,090	89,947		94,169	92,169
CAMPUS	3,180	3,291		3,291	3,291
Subtotal	92,270	95,238		99,460	97,460
International Visitors Program	40,440	41,817		40,400	41,817
Hubert H. Humphrey fellowships	5,000	5,195		5,500	5,500
Congress Bundestag exchange	2,500	2,500		2,500	2,500
Institute for Representative Government	540			540	540
Private section/citizen exchange:					
Eisenhower fellowships	1,500	1,500		1,500	1,500
Private sector/ citizens	7,790	6,750		7,189	7,189
Youth exchange	(1)	(1)		3,211	
Subtotal	9,290	8,250		11,900	8,689
Total	150,040	153,000	Defer	160,300	156,506

[1] Youth Exchange program included in USIA's S&E account at $3,245,900 in 1989, and $3,210,800 in 1990 estimate. These funds are included in the Salaries and Expenses Account.

The conferees agree that $200,000 shall be available to the Washington Workshops Foundation for administering the Mildred and Claude Pepper Scholarship program, contingent upon authorizing legislation being enacted into law.

Of the total provided, the conferees have included $2,000,000 for the Samantha Smith Memorial Exchange Program, which supports exchanges (including some which may not occur under academic circumstances) involving youth under the age 21 and undergraduate students under the age of 26. If additional funds become available, the conferees urge the USIA to provide up to a total of $3,000,000 for this program. The conferees direct the USIA to promote the program, and solicit and announce grant proposals explicitly under the name of the "Samantha Smith Memorial Exchange Program".

RADIO CONSTRUCTION

Amendment No. 171: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

RADIO CONSTRUCTION

For an additional amount for the purchase, rent, construction, and improvement of facilities for radio transmission and reception and purchase of installation of necessary equipment for radio transmission and reception as authorized by 22 U.S.C. 1471, $85,000,000, to remain available until expended as authorized by 22 U.S.C. 1477b(a), of which not to exceed $16,000,000 may be available for the completion of testing and first-year operations of television broadcasting to Cuba, including, but not limited to the purchase, rent, construction, improvement and equipping of facilities, operations, and staffing: Provided, That such funds for television broadcasting to Cuba may be used to purchase or lease, maintain, and operate such aircraft (including aerostats) as may be required to house and operate necessary television broadcasting equipment: Provided further, That the availability of such funds for television broadcasting to Cuba shall be subject to the provisions of Part B, title II of H.R. 1487 as passed the House of Representatives until such time as legislation authorizing such activity is enacted into law.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $85,000,000 as proposed by the Senate. The agreement also earmarks $16,000,000 to continue the development of television broadcasting to Cuba, including first-year operations as proposed by the Senate but inserts new language that provides that the availability of these funds shall be subject to the provisions of the authorizing legislation as passed the House until such time as such legislation is enacted into law. The House bill contained no similar provisions.

RADIO BROADCASTING TO CUBA

Amendment No. 172: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $12,700,000. The House bill contained no similar provision.

EAST-WEST CENTER

Amendment No. 173: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which appropriates $20,700,000 for the East-West Center and includes language which limits the base pay of East-West Center executives to the rate of GS-18 of the Classification Act of 1949, as amended, exclusive of any cap on such rate. The House bill contained no similar provision.

The amount provided in the conference agreement will provide for adjustments to base not requested in the budget.

NATIONAL ENDOWMENT FOR DEMOCRACY

Amendment No. 174: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum named in said amendment, insert the following: *$17,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $17,000,000 for the National Endowment for Democracy instead of $15,800,000 as proposed by the Senate. The House bill contained no similar provision.

The conferees direct the National Endowment for Democracy to give special emphasis to programs in Hungary and the other countries of Eastern Europe.

TITLE VI—GENERAL PROVISIONS

Amendment No. 175: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which provides that if any provision of this Act or the application of any provision is held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected. The House bill contained no similar provision.

Amendment No. 176: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 605. Five working days after enactment of this Act and thereafter, the Federal Trade Commission shall assess and collect filing fees established at $20,000 which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, "Salaries and Expenses" and Department of Justice, "Salaries and Expenses, Antitust Division": Provided, That fees in excess of $40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate amendment provided language which would have established a filing fee for premerger notification reports required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and prescribed a temporary fee of one-fiftieth of 1 percent of the value of such transactions pending the establishment of a fee schedule within 180 days of approval of this Act by the Attorney General and the Commissioners of the Federal Trade Commission. The Senate amendment also provided that of the fees collected, up to $30,000,000 shall be divided equally between the FTC and the Antitrust Division and credited to their respective appropriations accounts. Any amounts collected in excess of $30,000,000 shall be deposited in the Treasury.

The conference agreement provides that five working days after enactment of this Act, the Commission shall assess and collect a filing fee of $20,000 for premerger notification reports. The conference agreement also provides that the fees collected which are estimated to be at least $40,000,000 shall be divided equally between the Federal Trade Commission and the Antitrust Division of the Justice Department. Any fee collections above $40,000,000 shall be deposited to the credit of the Treasury of the U.S.

The House bill contained no similar provisions.

Amendment No. 177: Reported in technical disageement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the sum "$250,000" named in said amendment, insert the following: *$500,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement restores prior year language proposed by the Senate concerning the reprogramming of funds within appropriation accounts, but changes the amount subject to reprogramming from $250,000 as proposed by the Senate to $500,000. The House bill contained no similar provisions.

Amendment No. 178: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which requires that FY 1990 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act. The House bill contained no similar provision.

Amendment No. 179: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which continues all legislative provisions relating to the Legal Services Corporation in effect during FY 1989. The FY 1989 provisions prohibit abortion litigation and representation of illegal aliens, restrict lobbying and class action suits, require state and local bar associations to appoint a majority of the members of programs' boards of directors, amend the Legal Services Corporation Act which makes it easier to deny refunding to a grantee, provide a funding formula for the distribution of funds to basic field programs, require the incoming new Board of Directors to develop and implement a system of competitive bidding of grants, require the Corporation to renew grants for the full grant cycle, and restrict the implementation of certain regulatory provisions pending action by a new Board.

The conference agreement also contains language proposed by the Senate prohibiting the Corporation from implementing (but not promulgating) any new regulations prior to October 1, 1990 or until approved by a new Board of Directors. This provision will ensure that a new Board of Directors will have adequate opportunity to review major policy changes made by the existing lame duck board.

The conference agreement also includes language proposed by the Senate requiring any timekeeping requirement, which would represent a major policy shift, be undertaken by regulation if it is to be imposed; reverses the Corporation's decision to defund a grantee in a case where the Independent Hearing Officer selected by the Corporation held that their position was contrary to both the law and the Constitution; clarifies that the boards of national support centers can be appointed by the bar association representing the majority of attorneys practicing law in the locality where the center maintains its principal offices (the manner in which the existing bar association appointment provision has been enforced since 1983), and clarifies that previously adopted

restrictions on certain regulations expire if such action is directed by a new Board.

The House bill contained no provisions on any of these matters.

Amendment No. 180: Deletes language proposed by the Senate which would have limited the obligation or expenditure of funds for procurement of advisory or assistance services by the Commerce, Justice and State Departments and the Small Business Administration. The House bill contained no similar provision. The conferees agreed to delete this provision due to the impact that the drug supplemental appropriations act will have on advisory and assistance services for these departments and agencies.

Amendment No. 181: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

Sec. 609. (a) The Secretary of State, in consultation with the Secretary of Commerce, shall, with respect to those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the Secretary of Commerce, may affect adversely such species of sea turtles, for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles;

(3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;

(4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is party in order to make such treaty consistent with the purposes and policies of this section; and

(5) provide to the Congress by not later than on year after the date of enactment of this section—

(A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles;

(B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles; and

(C) a full report on—

(i) the results of his efforts under this section; and

(ii) the status of measures taken by each nation listed pursuant to paragraph (A) or (B) to protect and conserve such sea turtles.

(b)(1) IN GENERAL.—The importation of shrimp or products from shrimp which have been harvested with commercial fishing technology which may affect adversely such species of sea turtles shall be prohibited not later than May 1, 1991, except as provided in paragraph (2).

(2) CERTIFICATION PROCEDURE.—The ban on importation of shrimp or products from shrimp pursuant to paragraph (1) shall not apply if the President shall determine and certify to the Congress not later than May 1, 1991, and annually thereafter that—

(A) the government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

(B) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or

(C) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement changes the section number and includes language which requires the Secretary of State in consultation with the Secretary of Commerce to begin negotiations with other nations to develop agreements concerning the protection and conservation of sea turtles that are covered by Department of Commerce regulations requiring the use of turtle excluder devices. The amendment also requires the Secretary within one year to report to Congress on his efforts to carry out this section and the measures taken by each nation to protect and conserve such sea turtles, and certain other information. In addition the conference agreement requires a ban on importation of shrimp which have been harvested with commercial fishing technology which may adversely affect species of sea turtles subject to the regulations, not later than May 1, 1991, unless the President certifies to Congress that the harvesting nation has adopted regulations governing the incidental taking of sea turtles in the course of shrimp harvesting comparable to regulations adopted by the U.S., that the average rate of the incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by U.S. vessels in the course of such harvesting or the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of sea turtles in the course of such harvesting. The Senate amendment included all of these provisions except the last item in the certification process that the fishing environment of the harvesting nation does not pose a threat to the incidental taking of sea turtles. The House bill contained no similar provisions.

Amendment No. 182: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 610. (a) No monies appropriated by this Act may be used to reinstate, or approve any export license applications for the launch of United States-built satellites on Soviet- or Chinese-built launch vehicles unless the President makes a report under subsection (b) or (c) of this section.

(b) The restriction on the approval of export licenses for U.S.-built satellites to the People's Republic of China for launch on Chinese-built launch vehicles is terminated if the President makes a report to the Congress that:

(1) the Government of the People's Republic of China has made progress on a program of political reform throughout the entire country which includes—

(A) lifting of martial law;

(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

(C) release of political prisoners;

(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

(c) it is the national interest of the United States.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate amendment proposed language which would have prohibited the review or approval of any export license applications for launch of U.S.-built satellites on Soviet- or Chinese-built launch vehicles. The House bill contained no provision on this matter. The conference agreement inserts language which prohibits the reinstatement or approval of export license applications for launch of U.S.-built satellites on Soviet- or Chinese-built launch vehicles unless the President makes a report to the Congress that the People's Republic of China has achieved certain political and human rights reforms or that the reinstatement or approval of such export license applications are in the interest of the United States.

Amendment No. 183: Deletes language proposed by the Senate which would have prohibited all benefits under the generalized system of preferences (GSP) to a country designated by the Secretary of State as falling within section 6(j) of the Export Administration Act of 1979. The House bill contained no similar provision.

Amendment No. 184: Deletes language proposed by the Senate encouraging the Secretary of State to take immediate steps to secure an international ban on the use of driftnets on the high seas, including bringing before the UN a resolution calling for a worldwide moratorium on the use of driftnets until the adverse impact of driftnet fishing can be prevented. The House bill contained no similar provision.

The conferees strongly endorse the intent of the Senate amendment and urge the Secretary of State to take immediate steps to secure an international ban on the use of driftnets on the high seas, including bringing before the UN a resolution calling for a worldwide moratorium on the use of driftnets until the adverse impact of driftnet fishing can be prevented.

Amendment No. 185: Deletes language expressing the sense of the Senate that the conferees on H.R. 2788 should agree on an amendment which prohibits any of the funds appropriated in that Act from being used to promote, disseminate or produce obscene materials. The House bill contained no similar provision.

Amendment No. 186: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the section designation named in said amendment insert: *611*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement changes the section number and includes language proposed by the Senate which is a technical correction to the Immigration and Nationality Act to remove constraints which bar the uniting of orphaned illegitimate children with their adoptive American families. This language was included in last year's bill. The House bill contained no similar provision.

Amendment No. 187: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 612.(a)(1) The Federal Building and United States Courthouse located at 707 Florida Avenue in Baton Rouge, Louisiana, shall hereafter be known and designated as the "Russell B. Long Federal Building and United States Courthouse".

(2) Each reference in law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Russell B. Long Federal Building and United States Courthouse".

(b)(1) There is hereby authorized to be appropriated such sums, not to exceed $5,500,000 to remain available until expended, as may be necessary to establish a clinical law center at Seton Hall University in Newark, New Jersey.

(2) The Secretary of Education shall make such grant in accordance with all of the terms, conditions, and requirements set forth for such a center in Amendment Numbered 70 of Conference Report 99-236 (Public Law 99-88 [99 Stat. 305]) and the Secretary of Education is authorized to receive, review, and certify for payment applications for said grant. Not more than $1,000,000 of such grant shall be devoted to facilities.

(c) There is hereby authorized to be appropriated under Title III of the Higher Education Act of 1965, as amended, $4,500,000 to remain available until expended, for the cost of construction and related costs for a Health and Human Resources Center at Voorhees College in Denmark, South Carolina.

(d)(1) The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, is authorized, in accordance with the provisions of this subsection, to provide a grant for a Bio-science Research Center serving the midwestern States to be established at the University of Kansas in Lawrence, Kansas.

(2) No financial assistance may be made under this subsection unless an application is made at such time, in such manner, and containing or accompanied by such information as the Secretary of Health and Human Services may reasonably require.

(3) There are authorized to be appropriated not to exceed $5,200,000 to carry out the provisions of this subsection. Funds appropriated pursuant to this section are authorized to remain until expended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate amendment proposed language designating the Federal building/Courthouse in Baton Rouge, La. as the Russell B. Long Federal Building and United States Courthouse. The House bill contained no provision on this matter. The conference agreement retains the Senate language and adds certain clarifying provisions, and provides new language not included in either the House or Senate bills which authorizes certain appropriations for a clinical law center at Seton Hall University, a health and human resources center at Voorhees College in South Carolina and a bioscience research center at the University of Kansas.

The conferees agree that the Secretary of Education shall make available, under Title III of the Higher Education Act of 1965, as amended, funds appropriated in Public Law 100-436 (Stat. 102-1704) for the cost of constuction and related costs for a Health and Human Resources Center at Voorhees College in Denmark, South Carolina.

Amendment No. 188: Deletes language proposed by the Senate which would have prohibited the Census Bureau from counting illegal aliens in the United States for purposes or reapportionment. The House bill contained no similar provision.

Amendment No. 189: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which reads as follows:

In lieu of the section designation named in said amendment insert: *613*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate which expresses the sense of Congress that the international drug summit should include several items on its agenda, including consideration of measures to remove Manuel Noriega from any position of power in Panama. The House bill contained no similar provision.

Amendment No. 190: Deletes language proposed by the Senate which would have expressed the sense of Congress that GAO should report to Congress on the progress on implementation of the agreement between the U.S. and Japan on the development of the FS-X Weapons System. The House bill contained no similar provision.

The conferees agree that the Comptroller General shall submit reports to Congress in accordance with the provisions contained in Senate Amendment No. 190.

Amendment No. 191: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following:

SEC. 614. Until H.R. 1487, the Foreign Relations Authorization Act for Fiscal Year 1990 is enacted into law, the funds appropriated by this Act for the Department of State and the United States Information Agency may be obligated and expended on or before November 30, 1989, at a rate of operations not exceeding the rate available for fiscal year 1989 or the rate provided in H.R. 2991 as passed the Senate, whichever is lower and under the authority and conditions in applicable appropriations acts for fiscal year 1989, notwithstanding section 15 of the State Department Basic Authorities Act of 1956 and section 701 of the United States Information and Educational Exchange Act of 1948: Provided, That if H.R. 1487, the Foreign Relations Authorization Act of Fiscal Year 1990 is not enacted into law by November 30, 1989 funds appropriated by this Act for the Department of State and the United States Information Agency may be obligated and expended at the rate of operations and under the terms and conditions provided by H.R. 2991 as enacted into law, notwithstanding section 15 of the State Department Basic Authorities Act of 1956 and section 701 of the United States Information and Educational Exchange Act of 1948.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate amendment proposed language which would have expressed the Senate support for additional designations of new international gateways to foster increased export trade opportunities for nontraditional international gateway cities. The conference agreement provides new language not included in either the House or the Senate bill which provides that until H.R. 1487 the Foreign Relations Authorization Act for Fiscal Year 1990 is enacted, funding for the Department of State and the U.S. Information Agency shall be at the lower of the FY 1989 rate or the rate contained in H.R. 2991 as passed the Senate, until November 30, 1989, at which time, if H.R. 1487 is not enacted into law, the rate shall be at the rate provided in H.R. 2991 as enacted into law under the terms and conditions of H.R. 2991. The conference agreement also contains new language waiving certain provisions of law to permit the obligation of these funds. The House bill did not contain any of these provisions.

Amendment No. 192: Deletes language proposed by the Senate commending the efforts of the Departments of Defense, Justice and State to eliminate anticompetitive bidding practices at U.S. military facilities in Japan. The House bill contained no similar provision.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1990 recommended by the Committee of Conference, with comparisons to the fiscal year 1989 amount, the 1990 budget estimates, and the House and Senate bills for 1990 follow:

New budget (obligational) authority, fiscal year 1989	$15,398,265,000
Budget estimates of new (obligational) authority, fiscal year 1990	19,167,436,000
House bill, fiscal year 1990	5,801,401,000
Senate bill, fiscal year 1990	17,419,689,000
Conference agreement, fiscal year 1990	17,248,903,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1989	+1,850,638,000
Budget estimates of new (obligational) authority, fiscal year 1990	−1,918,533,000
House bill, fiscal year 1990	+11,447,502,000
Senate bill, fiscal year 1990	−170,786,000

NEAL SMITH,
BILL ALEXANDER,
JOSEPH D. EARLY,
BERNARD J. DWYER,
BOB CARR,
ALLAN B. MOLLOHAN,
JAMIE L. WHITTEN,
HAL ROGERS,
RALPH REGULA,
JIM KOLBE,
SILVIO O. CONTE,
Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,

DALE BUMPERS,
FRANK R. LAUTENBERG,
JIM SASSER,
BROCK ADAMS,
ROBERT C. BYRD,
WARREN B. RUDMAN,
TED STEVENS,
MARK O. HATFIELD,
ROBERT W. KASTEN, JR.,
PHIL GRAMM,
JAMES A. MCCLURE,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. KILDEE) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. WYDEN, for 30 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Member (at the request of Mr. THOMAS of Wyoming) and to include extraneous matter:)

Mr. GINGRICH.

(The following Member (at the request of Mr. KILDEE) and to include extraneous matter:)

Mr. WYDEN.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 801. An act to designate the U.S. Court of Appeals Building at 56 Forsyth Street in Atlanta, GA, as the "Elbert P. Tuttle United States Court of Appeals Building";

H.R. 3385. An act to provide assistance for free and fair elections in Nicaragua; and

H.J. Res. 380. Joint resolution designating October 18, 1989, as "Patient Account Management Day."

ADJOURNMENT

Mr. WHITTEN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 21 minutes a.m.), under its previous order the House adjourned until Monday, October 23, 1989, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1865. A letter from the Acting Inspector General, Department of Justice, transmitting their audit of the Department of Justice, Land and Natural Resources Division Superfund financial activities for fiscal year 1988, pursuant to Public Law 95-542, section 8D(a)(3) (102 Stat. 2520); to the Committee on Energy and Commerce.

1866. A letter from the Acting Commissioner, Bureau of Reclamation, Department of the Interior, transmitting a report entitled "Technical Report on Safety of Dams Deficiencies and Recommended Corrective Action," with the associated environmental assessment for Coolidge Dam, pursuant to Public Law 95-578; to the Committee on Interior and Insular Affairs.

1867. A letter from the Director, Office of Personnel Management, transmitting notice of a proposal for a personnel management demonstration project submitted by the Secretary of Agriculture, pursuant to 5 U.S.C. 4703(b)(4)(B), (6); to the Committee on Post Office and Civil Service.

1868. A letter from the Chairman, U.S. Merit Systems Protection Board, transmitting the Board's report titled "The Senior Executive service: Views of Former Federal Executives," pursuant to 5 U.S.C. 1206(b)((5)(A); to the Committee on Post Office and Civil Service.

1869. A letter from the Secretary, Department of the Interior, transmitting a report entitled "The Impact of the Compact of Free Association on the United States Insular Areas," pursuant to Public Law 99-239, section 104(e); jointly to the Committees on Interior and Insular Affairs and Foreign Affairs.

1870. A letter from the Secretary, Department of the Interior, transmitting the 1988 annual report describing the cumulative environmental effects of the Outer Continental Shelf Oil and Gas Program, pursuant to 43 U.S.C. 1346(e); jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SMITH of Iowa: Committee of conference. Conference report on H.R. 2991 (Rept. 101-299). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WHITTEN:

H.J. Res. 423. Joint resolution making further continuous appropriations for the fiscal year 1990, and for other purposes; to the Committee on Appropriations.

By Mr. GEPHARDT:

H.J. Res. 424. Joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended; to the Committee on Appropriations.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 941: Mr. BOEHLERT.

H.R. 2489: Mr. JONTZ and Mrs. COLLINS.

H.R. 2972: Mr. MARKEY, Mr. PALLONE, Mr. ESPY, Mr. FOGLIETTA, Mr. FIELDS, Mr. CONDIT, Mr. MFUME, Mr. HAYES of Illinois, Mr. DELLUMS, Mr. BORSKI, Mr. MARTIN of New York, Mr. STUMP, Mr. ROYBAL, Mr. MARLENEE, Mr. CONTE, Mr. BLILEY, Mr. BEVILL, Mr. GOODLING, Mr. YOUNG of Alaska, Mr. SHAYS, and Mr. TAUKE.

H.R. 3037: Mr. PRICE.

H.R. 3164: Mr. LANCASTER, Mr. STANGELAND, Mr. HAMMERSCHMIDT, Mr. SIKORSKI, Mr. HUCKABY, Mr. CHAPMAN, Mr. ANTHONY, Mr. OBERSTAR, Mr. BROWDER, Mr. PAYNE of New Jersey, Mr. RIDGE, Mr. DYSON, and Mr. VALENTINE.

H.R. 3292: Mr. LAUGHLIN, Mr. ENGLISH, Mr. THOMAS of Georgia, Mr. SUNDQUIST, Mr. BARNARD, and Mr. JAMES.

H.J. Res. 146: Mr. HOUGHTON, Mr. CONDIT, Mr. FLAKE, Mr. ORTIZ, Mr. LEWIS of Florida, Mr. TAUZIN, Mr. OXLEY, Mr. SPENCE, and Mr. LEHMAN of California.

H.J. Res. 410: Mr. GEPHARDT, Mr. MURTHA, Mr. MAVROULES, Mr. STALLINGS, Mr. FAUNTROY, Mr. FALEOMAVAEGA, Mr. DONNELLY, Mr. GINGRICH, Mr. HANSEN, Mr. HORTON, Mr. HUTTO, Mr. HYDE, Mr. ORTIZ, Mr. JONES of North Carolina, Ms. LONG, Mr. HAYES of Illinois, Mr. LEWIS of Georgia, Mrs. COLLINS, Mr. SYNAR, Mr. MARTINEZ, Mrs. LOWEY of New York, Mr. SANGMEISTER, Mr. LIPINSKI, Mr. ENGEL, Mr. SARPALIUS, Mr. STENHOLM, Mr. MORRISON of Connecticut, Mr. ANTHONY, Mr. HAYES of Louisiana, Mr. DURBIN, Mr. KLECZKA, Mrs. KENNELLY, Mr. FLIPPO, Mr. HAWKINS, Mr. NEAL of Massachusetts, Mr. SOLARZ, Mr. RICHARDSON, Mr. TANNER, Mr. MADIGAN, Mr. LEACH of Iowa, Mr. PICKETT, and Mr. LEVIN of Michigan.

EXTENSIONS OF REMARKS

STOP THE TAX-AND-SPEND MENTALITY

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 20, 1989

Mr. GINGRICH. Mr. Speaker, I would like my colleagues to be aware of an excellent op-ed piece which appeared in the October 1 edition of the New York Times. The piece, written by our colleague Mr. VANDER JAGT, is especially appropriate in light of recent votes on the House floor.

TAX-AND-SPEND DEMOCRATS NEVER LEARN

(By Guy Vander Jagt)

WASHINGTON.—People like to say the only certainties in life are death and taxes. Medical science is making headway against death, and Democrats in Congress appear to be working hard to retain the certainty of the second.

During President Bush's first eight months in office, he has proposed major domestic programs in areas of critical public concern: the Federal budget, crime, drugs, education and job creation.

A pattern has emerged: Each proposal is well received by the experts in the field and, more importantly, by the public. Each proposal is a step toward delivering on the President's campaign promise of a kinder, gentler America and an agenda for his promise of "no new taxes."

Then, almost each and every proposal meets with Democrats calling for more spending and higher taxes and, when they are in a creative mood, new taxes—even though every White House initiative has included a way to fund the proposal without a tax increase.

Consider Mr. Bush's national drug strategy. He presented the first comprehensive national strategy to turn the tide against the drug invasion—along with the largest one-year funding increase ever to pay for it. His plan will fight every aspect of the drug crisis—from supply to demand, to treatment and education. The plan involves every level of government—Federal, state and local.

The public has heard little criticism of the substance of the drug plan. But, within minutes of the President's presentation on television, liberal Democrats perceived a glaring imperfection: The price tag was too low.

Congressional Democrats have shown us their swift and unchanging reflex for higher taxes and more spending several times this year.

For example, President Bush proposed a new era for education and put forward a plan for encouraging excellence and reform. Included in the $441 million legislative package are programs to reward excellence, expand magnet schools and provide funds for drug abuse prevention.

These funds are over and above President Reagan's $21.9 billion request for 1990. Nonetheless, with Pavlov's dog watching in awe, the Democrats in Congress responded: We need more.

To encourage more investment, Mr. Bush, during his campaign, called for a reduction in the capital gains tax. Economists agree that such a cut stimulates the economy and creates jobs.

Because of the President's patience and leadership, and because a group of traditional Democrats have broken with their liberal leaders, a reduction in the capital gains tax passed the House last Thursday.

Representative Richard Gephardt, the Democrats' majority leader, however, is utterly unhappy with the cut in capital gains, proving that all his talk about competitiveness is—talk. If he really understood how to make the U.S. more competitive against trading partners, he would be delirious in his support for cutting the capital gains rate to bring U.S. rates closer to the rates of our trading partners. (With minor qualifications, West Germany and Japan have virtually no taxes on capital investments.)

This issue shows the key difference between Republican and Democratic policies. Republicans believe, and their policies have confirmed, that lower tax rates benefit every American. Democrats believe that lowering tax rates is wrong. All the talk about a tax break for the rich is political double talk. On principle, liberal Democrats oppose less Government spending and lower taxes.

How has the Democratic leadership responded to the President Bush's campaign pledge, which helped lead him to an electoral landslide? They want to revive some type of individual retirement account and use it as a cover to—you get one guess—raise taxes.

In 1981, Ronald Reagan proposed and won individual income tax rate reductions of 25 percent. His tax cut brought our economy back to life and started the longest peacetime expansion in our history, an expansion that continues today.

A few weeks ago, the Democrats met in Washington to analyze their latest national defeat. But analyzing the last election in isolation could lead to unsound conclusions.

The results of the 1988 elections should be inspected for resemblances to the 1980 and 1984 elections. That type of examination will show strong parallel. Read the public's lips and count their votes: Cut Government waste, redirect funding from ineffective programs and achieve greater efficiency in Government spending. But please, no new taxes.

The distinction between the Republican and Democratic parties on increasing the tax burden are profound. And that distinction will remain deep and lasting.

VETO THREAT TURNS BACK ON VIOLENT CRIME VICTIMS

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 20, 1989

Mr. WYDEN. Mr. Speaker, I am appalled at the President's threat to veto a measure that's vital to women who are victims of brutal, violent crime, the victims of rape or incest.

In this country we do not withhold medical treatment for the victims of muggings or assaults because of their inability to pay. To have a separate policy regarding the victims of rape or incest is clearly discriminatory and downright cruel—but this is the situation in our country today and what our President has now said he supports.

The President needs to realize that when you want to be tough on crime, you don't beat up on the victims.

A woman who is pregnant as the result of a rape or incest is entitled to begin her recovery as quickly as possible. She should not be forced to live with the constant reminder of the brutal invasion of her body simply because she did not have the money to pay for an abortion.

A Presidential veto of the 1990 labor-health and human services-education appropriation bill would be a disgraceful denial of human decency to victims of violent crime.

I urge my colleagues to display more courage and compassion than the President and vote to override a veto.

TRIBUTE TO ARTHUR "MR. BERWYN" POLKOW

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 20, 1989

Mr. LIPINSKI. Mr. Speaker, it gives me a great deal of pleasure to pay tribute to an exemplary member of my Fifth Congressional District in Illinois, Mr. Arthur F. Polkow. Mr. Polkow has served for 37 years as office manager, assistant vice president of Savings, and vice president of Savings and Operations at the Household Bank in Berwyn, IL. Not only is he well known in Berwyn for his long association with the former First Federal, but Mr. Polkow is recognized for his commendable participation with the Kiwanis Club of Berwyn and the South Berwyn Business & Financial Institutions. His longtime association with these institutions and his community service work have resulted in Mr. Polkow being fondly known as "Mr. Berwyn."

Raised in Berwyn, IL, Arthur F. Polkow attended Pershing Grade School and Morton High School before receiving his bachelor of science in accounting from the University of Illinois. Mr. Polkow also served as a member of the U.S. Occupation Forces following the conclusion of World War II.

Arthur F. Polkow's commitment to his community and family is impressive and deserving of special recognition and honor. I am sure that my colleagues will join me in expressing congratulations to Arthur F. Polkow for his 37

years of selfless dedication, loyalty, professionalism, and priceless contributions to his community. I wish him well in his retirement and hope his life continues to be an adventure full of pleasant memories.

TRIBUTE TO MARY ELLEN WITHROW

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 20, 1989

Mr. TRAFICANT. Mr. Speaker, I rise to pay tribute to Mary Ellen Withrow, State treasurer of Ohio. Treasurer Withrow has been an elected official for 20 years and deserves great recognition for her accomplishments, not only as a public servant, but also for the headway she has made for women in the public arena.

Treasurer Withrow's political career began in 1969 when she was the first woman ever to be elected to the school board of the Elgin local school district in Marion County, OH. She then became Marion County treasurer and served two terms in that position. Ms. Withrow was elected Ohio's treasurer in 1982 and was reelected in 1986. She is currently planning her reelection campaign for her third term in office.

Ms. Withrow has not only been a leader for her fellow citizens, but she has also held positions of leadership in professional organizations. Presently she is the president of the National Association of State Auditors, Comptrollers, and Treasurers. She was the past vice president for the 10-State Midwestern region of the National Association of State Treasurers. Recently she was elected to the executive committee of the Democratic National Committee.

Treasurer Withrow has created a variety of programs to improve Ohio's economy and business environment. One such program is the Withrow Plan of Linked Deposits which sparks economic growth by providing low interest rates for small businesses. Another program she began was the Withrow Agri-Linked Deposits Program, which provides reduced-rate financing for Ohio farmers. As a result of these and other programs implemented by Treasurer Withrow, Ohio has earned more than $1 billion in investments.

Mr. Speaker, I would like to take this opportunity to congratulate Mary Ellen Withrow on her 20 years of public service to the people of Ohio. Treasurer Withrow epitomizes what elected officials should strive to become. The reason for her success is her willingness to go against the odds and face challenges with unyielding determination. She is deserving of great praise and I am proud to represent such an outstanding woman.

CUBAN PLANTADOS STILL IN PRISON

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 20, 1989

Mrs. ROS-LEHTINEN. Mr. Speaker, three political prisoners called plantados remain in prison years after Fidel Castro's regime stated that the Government had released all historic political prisoners.

In July of 1987 the government of Fidel Castro officially announced the liberty of all historic political prisoners still in jail.

Two and half years have elapsed and the following remain confined at the Combinado del Este state prison: Mario Chanes de Armas, Ernesto Diaz Rodriguez, and Alfredo Mustelier Nuevo. Another of the plantados, Alberto Grau Sierra, has been freed but not allowed to leave Cuba.

As we know, plantados are prisoners who are jailed for political reasons and who refuse to cooperate with their captors. For this, the plantados are separated from the other prisoners, are treated in a far more harsh manner, and are routinely harassed by the jailers.

I wish to denounce, Mr. Speaker, the violation of these citizens' human rights by this arbitrary action on the part of Castro's regime.